This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

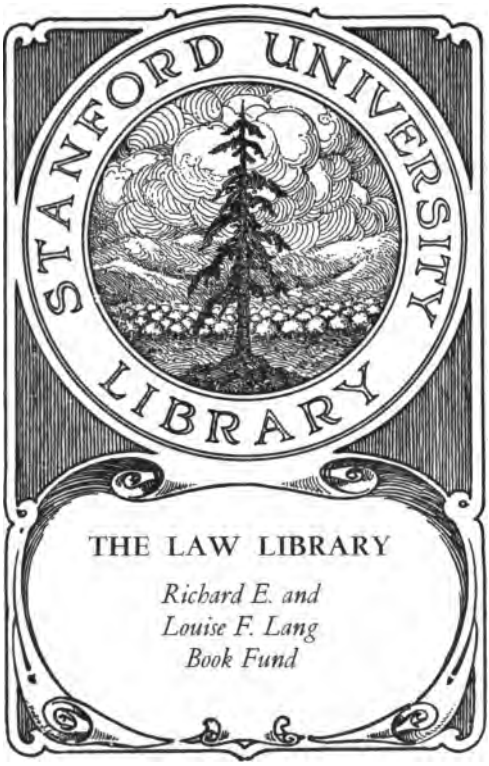
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`


STANFORD UNIVERSITY
LIBRARY
THE LAW LIBRARY
Richard E. and
Louise F. Lang
Book Fund

AF
AL
XL t

STANFORD LAW LIBRARY

KEY CLOTH

THE

TRIAL

BETWEEN

WILLIAM LEWORTHY

AND THE

GLOBE INSURANCE COMPANY;

BEFORE

MR. BARON GRAHAM,

AND A SPECIAL JURY,

AT TAUNTON ASSIZES, 5TH AND 6TH APRIL, 1810.

TAKEN IN SHORT HAND.

VINCIT VERITAS.

LONDON:

PRINTED BY S. BURTON AND B. WRIGHT, 31, LITTLE QUEEN STREET, LINCOLN'S INN FIELDS.

1810.

MR. SERJEANT LENS, MR. JEKYLL, MR. SERJEANT PELL, MR. DAMPIER,	*Counsel for the Plaintiff.*
MR. BURROUGH, MR. GASELEE, MR. ABRAHAM MOORE,	*Counsel for the Company.*
MR. WINGATE,	*Plaintiff's Attorney.*
MESS. KAYE AND FRESHFIELD,	*Attorneys for the Company.*

The following is a List of the Gentlemen who composed the Special Jury:

MATTHEW BRICKDALE,	West Monkton.
WILLIAM ASHFORD SANFORD,	Ninehead.
JOHN NURTON,	Milverton.
WILLIAM HANNING,	Dillington.
HENRY BULL STRANGEWAYS,	Shapwick.
JOHN HALLETT,	Misterton.
CHARLES PARKE,	Dowlish Wake.
JOHN GOODFORD,	Henford.
THOMAS SOUTHWOOD,	Pitminster.
	ESQUIRES.

TALES.

THOMAS ENGLAND,	Barrow Tithing.
JOHN GARDNER,	East Lambrook.
JOHN SKINNER,	Ash Priors.
	GENTLEMEN.

ADDRESS

TO THE

PUBLIC.

THE DIRECTORS OF THE GLOBE INSURANCE COMPANY, from a sense of duty to the respectable body they represent, deemed it right to refuse the payment of a claim made upon them in December 1807, by WILLIAM LEWORTHY, of Walcot Street, Bath, Cabinet Maker and Broker, for a loss alledged to have been sustained by fire.

In consequence of that refusal, a gentleman who ought to have been better informed, as well upon the facts of the transaction, as upon the proper course to be pursued, has thought it right to endeavour to prejudice them in the public opinion by representations and the application of epithets equally unfounded.

The Directors are now in a condition to submit to the public the authentic result of an investigation of the transaction which was the subject of those unjust

attacks, and even without soliciting an attention to the connected chain of circumstances that must produce conviction in the most doubting mind, they ask confidently, upon a mere outline of the transaction, whether they have deserved the calumny with which they have been loaded, for having refused payment of a loss claimed under circumstances they will but lightly touch upon.

The claimant offered the whole of his goods for sale upon his own premises in February 1807, when they produced about £140.—His circumstances were materially worse during the remainder of that year—he was obliged to send the different articles of furniture for sale as soon as manufactured. He was returned a pauper in the parish books and excused his taxes. He was relieved from serving in the militia upon his own oath, sworn four days before the fire, that he did not possess property of the value of £100; and yet he would have it believed, that at the time of the fire, his property destroyed upon the premises amounted to £745. His family consisted of a wife, four children, a female servant, and four workmen; but, previous to the time of the fire, these persons had all left the house, and Leworthy was the only person in it—the house was on fire in several parts, and particularly the kitchen, the shop and the garret, which were all in front; but no fire in the dining-room, which was immediately over the shop and under the garret—and when the alarm of fire was given, Leworthy immediately made his appearance compleatly dressed (except his coat) at the window of the dining-room. The claimant admitted that he had kept no fire in his house on that day,

nor for two or three days before; nor had he any candle alight; and, to account for the conflagration, he said, "that he supposed some fire had been tied "to the cat's tail, and that she had brought it down "the chimney, and set fire to the house." Add to this, that Leworthy endeavoured to prevail upon a watchman who assisted at the fire to swear that he (Leworthy) was burnt out naked.

These circumstances induced the Directors to resist the payment: the result has shewn they were justified in so resisting—and they will now submit a short statement of the transaction from the time of the fire to the period at which the short-hand writer's notes of the Trial will take it up.

On the 8th of December, 1807, the fire at Leworthy's house took place in the night.—Some reports were very soon in circulation unfavourable to Leworthy, but no facts, capable of being investigated, came to the knowledge of the Directors; and on the 30th of December they received an account or estimate of the loss signed by Leworthy, accompanied by his affidavit of the truth of that account; upon which was written a certificate, signed by a clergyman and three other persons, stating "that the statement did not appear to be unfair."

Although this certificate was not in the form required by the Conditions of Insurance stated at the foot of the Policy, yet, being signed by a clergyman and three other persons, the Directors took it for granted that the signatures were those of "the "minister" of the parish in which Leworthy resided and of other respectable householders in that

parish * ; which, being in substance what the stipulation in the policy required, they felt no disposition to occasion delay by requiring a more strict and formal compliance with it. The papers were accordingly submitted to a committee of Directors on the 7th of January 1808, and allowed. In the ordinary course of office the subject had to pass two other committees on the 14th and 21st January ; and on the following day Bank post-bills to the amount of

* It was not from inadvertence that the certificate sent to the company was signed by a clergyman, not being the minister of the parish, and by other persons, instead of the churchwardens of the parish ; as it now appears the churchwardens were applied to, and refused to sign the certificate ; but that those gentlemen (with a degree of feeling and humanity highly creditable to them) informed Leworthy, that, though they could not conscientiously certify to enable him to recover his loss, while left to act upon their own judgment and knowledge, yet they were unwilling that his not recovering, if he had really sustained any loss, should be dependant upon them, and they were therefore willing to attend the committee of the parish, and to afford Leworthy an opportunity of stating his own story, and examining his witnesses ; and if the committee would sanction the churchwardens in signing the certificate, they would do so.

In consequence of this very kind suggestion on the part of the churchwardens, a committee was summoned, at which Leworthy and his witnesses were heard ; and the following minute, entered in the committee-book, will shew the result :

> " 27th May 1808, at a committee summoned to take into
> " consideration a request from Mr. Leworthy to sign a
> " certificate as to his loss by fire, We the undersigned
> " are of opinion, that Mr. Leworthy had not adduced
> " evidence sufficient to satisfy us in signing the certi-
> " ficate in order to establish the loss he declares to have
> " lately sustained by fire."
>
> Signed by all the persons present.

the loss claimed (£745) were remitted to the Company's agent at Bath.

When these Bills arrived at Bath, the Company's agent there felt it his duty to state to the Chairman of the Company (who then happened to be at Bath) the numerous circumstances of suspicion belonging to the transaction *, which led the Chairman to detain the bills, and to enter into a minute investigation of the subject; and, notwithstanding the unwillingness persons always discover to fix a charge of criminality upon their neighbour, yet the result of the enquiry imposed it upon the Directors, as a duty to their constituents, to resist the payment.

That determination was immediately communicated to Leworthy; and in the month of March following an application was made by an Attorney in London on behalf of Leworthy, proposing a reference of his claim to arbitration. The Directors would have been well warranted in declining that mode of decision under the circumstances then in their possession (although much short of what they afterwards discovered); but their conditions of insurance held out an implied engagement, that, in case of difference, it should be referred to arbitration; and they felt it more respectful to the public to comply with that condition, even at the risk of an unworthy individual obtaining the fruit of his fraud,

* Leworthy had effected his insurance with an agent of the company residing several miles from Bath, which prevented the agent at Bath from interfeting in the investigation until employed to do so, and which was not till after his communication to the Chairman.

than by refusing it to incur the charge for a moment of a breach of faith.

After some delays on the part of Leworthy in naming and altering the nomination of his arbitrator, an agreement of reference was entered into on the 10th of October 1808, stating, that "It had been "alledged by the said William Leworthy, that a loss "by fire had happened to his property; and the said "William Leworthy had applied to the said Company "for payment of the same, and that the said Com-"pany had refused to pay the same, alledging that "the said Company was not liable thereto;" and John Hawksey Ackerley, esq. and Samuel Batchellor, esq. were appointed the arbitrators, with power to name a third arbitrator, and the decision of any two to be final.

The arbitrators proceeded upon the investigation of the transaction: Leworthy was examined to establish his own case, and several witnesses were examined on his behalf; but, so far from proving the justice of the claim, *two of those witnesses stated, that, from what they saw of the transaction, "it was "their opinion Leworthy wilfully set fire to the premises;"* and the account given by Leworthy himself, as to his stock, was wholly incredible *. In this

* He claimed to be paid for 300 pounds of feathers said to have been lost by the fire; and in his examination relating to them he made the following statement: "The feathers in the "front attic were worth between 60 and £70.—I can't tell the "weight—I think there was between 300 and 400 pounds weight "—I can't tell of whom I bought the last packages of feathers; "there were three brought (one by mistake) I don't know where "the person lived—I had no means of finding him out since the

stage of the investigation Mr. Ackerley desired that the original claim and affidavit should be put into the hands of Leworthy before he closed his examination: to this Mr. Batchellor objected, stating as his reason, that if Leworthy had made up his claim from any actual materials, he had the same means of furnishing his recollection; and, in that case, if he made out twenty accounts they would be consistent with each other; but if, instead of making out his claim from any real account of loss, he in reality guessed at the sums to be put down, his examination would most probably differ materially and substantially from his claim, and enable the arbitrators to appreciate its value for accuracy and authenticity. Mr. Batchellor, however, informed Mr. Ackerley, that so soon as Leworthy should have closed his examination the papers should be produced to him, and in the mean time copies should be furnished to Mr. Ackerley for his own information, but with an understanding that he would not shew them to Leworthy, and copies of the papers were sent to Mr. Ackerley on the 10th or 11th December, 1808, accordingly, but he returned them.

Some correspondence took place between the two

"receipt has been destroyed—I don't know the carman that "brought them—I can't tell whether I assisted in carrying them "up stairs—three persons were requisite to carry up a package— "I can't tell if two could do it—I don't know that I used a great "many of them—I don't know to whom I sold any—those feathers which were brought in last, and more beside, were consumed by the fire——I don't know who had the bag that was "brought by mistake."

arbitrators upon the subject of the papers, which ended in Mr. Ackerley's addressing the Directors, requiring they would name another arbitrator in the room of Mr. Batchellor, which the Directors declined doing, as his conduct appeared to them to have been perfectly correct and honourable *; and they recommended Mr. Ackerley to agree with Mr. Batchellor in the nomination of a third arbitrator, who would decide between them, and agree with the one or the other; but Mr. Ackerley, instead of adopting that suggestion, persevered in writing to and menacing the Directors, unless they would name another arbitrator, or pay the loss, or prosecute Leworthy.—These addresses were followed up by attacks, on the part of Mr. Ackerley, upon the Company, in several respectable public prints, which commenced in the month of May 1809, and were followed up at intervals until February 1810. In these publications the conduct and motives of the Company were grossly misrepresented; and the public was called upon to

* When Mr. Batchellor was appointed, the only instruction he received was, that very strong suspicions existed as to the fairness of the loss; but the Directors wished the subject to be investigated with the utmost liberality, and would be better satisfied to find that those suspicions were removed, and that they would be warranted in paying the money, than that they should be obliged to fix upon Leworthy the suspicions entertained; and the Directors feel it due to Mr. Batchellor to declare, that throughout the investigation, he has conducted himself with firmness and perseverance in his enquiry after truth, but at the same time with a moderation and forbearance (under circumstances of great provocation) that has well comported with the respectability the Directors wish should ever belong to the transactions of the Company, and of those acting on its behalf.

believe that the Company acted with cruelty and oppression toward Leworthy, in not paying his claim, nor prosecuting him for a fraud.

The Directors relied most firmly upon the good sense and discernment of the public, that the honour of the Company would not suffer in consequence of these publications, but that full credit would be given them for acting in this instance consistently with their general character for honour and liberality; and they therefore suffered the attacks made upon them to pass unnoticed, knowing that an opportunity must at some time or other occur of shewing how unjustly they were defamed.

Upon the question so frequently put in the public advertisements, why the Directors did not prosecute Leworthy if they would not pay him? they would have informed Mr. Ackerley, had he chosen a course that could entitle him to a reply, that, having entered into a reference with Leworthy before they were in full possession of the very strong case that could be made against him, and having in the course of that reference become acquainted with Leworthy's evidence, and possessed of the means of controverting it, they felt it might be considered severe to prosecute under such circumstances; and they therefore determined upon the safer course, and to err on the merciful side of the question, by forbearing to prosecute. The frequent taunts of Mr. Ackerley subsequent to that determination made no alteration in their decision, because it appeared to them that they ought not to punish Leworthy for the highly improper conduct of a gentleman whose zeal outran his judgment.

Leworthy, acting under this influence, brought an action upon his policy. Upon the trial of that action, A VERDICT WAS FOUND IN FAVOUR OF THE COMPANY; and it will be seen in the following pages, that it was by the mercy and forbearance of the Company, that the jury were relieved from giving a verdict upon a part of the case, that must have sent Leworthy to be tried for his life, with the weight of the finding of a special jury, deciding the very question, which was afterwards to be discussed in a criminal court.

It is impossible the Directors should feel in any measure indifferent to the opinion of the public; and they have therefore felt it due to that public, particularly to the respectable inhabitants of the city of Bath, to themselves, and to the company they represent, to offer this short statement of the transaction which gave occasion to the legal investigation which will form the subject of the remaining sheets. Of that Company it may however be right to say it has been established upwards of seven years—it has in that period paid losses to the amount of nearly £217,000—it has resisted but one loss (in addition to Leworthy's); and as to that one, the Company having long since pleaded to the action, the assured has not thought proper to proceed. The Company has actually invested, for the protection of the public, upwards of one million sterling: And it is therefore with the utmost confidence the Directors submit, whether from the security afforded to the public, the whole tenor of their conduct in the course of their extensive and numerous transactions with that public, and the facts of the transaction disclosed in the following sheets, they have deserved the impu-

tations endeavoured to be cast upon them; or whether toward Leworthy, instead of oppression, they have not shewn more kindness than his friends have done; and to the public more respect, than those by whom that public has been misinformed and deceived.

TRIAL, &c.

Taunton, 5 and 6 April, 1810.

BEFORE MR. BARON GRAHAM AND A SPECIAL JURY.

LEWORTHY—against MOLLING and another, Directors of the GLOBE INSURANCE COMPANY.

MR. DAMPIER,

May it please your Lordship—Gentlemen of the Jury, in this cause William Leworthy is Plaintiff, and Frederick Molling and James Taddy, two of the Directors of the Globe Insurance Company, are Defendants. The declaration states, that the Plaintiff made an insurance, at a certain premium, and upon certain conditions, of his stock in trade in Bath, against fire for a year. The declaration avers, that he had stock to the amount of £745, and that the Defendants dispensed with one of the conditions, which was, his procuring a certificate under the hands of the Minister and Churchwardens of the parish in which he resided, importing, that they believed the account which the Plaintiff delivered in of his loss to be fair; the Defendants have pleaded,

First, that the Plaintiff did not give in as particular an account of his loss as the nature of the case would admit.

Secondly, that he gave in a false and fraudulent account, for that he had not the quantity of goods which he ought to have according to that account; on the contrary, that he had goods to a very inconsiderable amount.

Thirdly, that there was fraud and false swearing in an affidavit made by the Plaintiff, stating, "that "the account contained a just, true account, or "estimate of his loss by fire, and not in any wise ex-"aggerated for the purpose of fraud or imposition."

Fourthly, that they did not dispense with the certificate of the Minister and Churchwardens.

And lastly, that the Plaintiff fraudulently set his house on fire. The plaintiff in his replication, denies these several pleas, and upon these facts issue is joined.

MR. SERJEANT LENS,

May it please your Lordship—Gentlemen of the Jury, Mr. William Leworthy the Plaintiff, whose interests are this day committed to the charge of myself and my learned friends, has more at stake in this action than ordinarily comes in question, in causes of a civil nature. The questions which are to be discussed, and which you have already heard from my learned friend, will affect not only the property which the Plaintiff seeks to recover, but his character afterward in life, and probably in one event his life itself. Knowing and fully apprized of the situation in which he stands, the conscious innocence which bears him through to this hour, will, I am persuaded, bear him to the last, and satisfy you that, whatever rumours or suspicions may have been enter-

tained on this subject, they are entirely without foundation, and that he has a right to recover from this Company the sum which he demands of them—Gentlemen, there is an objection arising out of a formal condition, that, after the loss was incurred, the Plaintiff did not take the exact course prescribed by his insurance, that he did not make his application in the way prescribed, by having a regular and formal certificate attested by the proper persons. There is an issue joined in the proceedings upon the question, whether they did not dispense with such a certificate, because it is perfectly well known, that such a certificate was never demanded, never asked for, and never thought of, while they exclusively relied upon what they deemed equal to it, namely, a certificate signed by a Minister; not, it is true, of the exact description prescribed by this policy, but fully as respectable; this was laid before the Directors, who, without making any objection upon that account, admitted it so far, as to give an absolute order for the payment of the money, waving on this occasion all objection of form, and meaning to pay the amount at the time, if other circumstances had not intervened, which made them resist this claim till it could be further investigated. I think, therefore, it will be quite sufficient in the first place to shew, that in the sense and meaning of these parties, the Defendants knowing the kind of certificate which they had received from the Plaintiff, and making no objection to it, nor requiring one of another sort, have, in substance, though not in form, waved that formality, and cannot now put the Plaintiff to the proof of that

which it is no longer in his power to obtain. It is right that we should come to an understanding on this subject; for myself, I take it for granted, that, it is not meant to be relied upon. Whatever course my learned friend may think fit to pursue, I shall now proceed, considering the dispensation as sufficient for my purpose, very briefly to state to you the circumstances of this case.

Mr. Burrough here stated that Mr. Serjeant Lens was not to assume any thing from his silence; whatever was right would be done by the respectable Company for whom he appeared; he had however no hesitation in saying, that he firmly believed the Plaintiff's object was to find an excuse for letting the cause go off upon a question of form, in order to avoid a discussion of the merits.

Mr. Serjeant Lens;

Gentlemen, I am confident my learned friend will not press this objection, in the way in which I feel it may be pressed; therefore, without asserting it confidently, but at the same time considering that such an assurance will be given, I will briefly state what are the real merits of this cause.

Gentlemen, in an action of this sort, it is incumbent on the Plaintiff to make out, that the account which he has delivered in of his loss is a fair and honest account, that he has demanded no more than the truth of the facts authorize him to demand. Here it is necessary to attend a little to the circumstances of the Plaintiff; his peculiar mode of business renders it more difficult for him, than for many

others to give a distinct and precise account of the value of his property upon any given day; he is a broker, a dealer in furniture, and other articles to a great extent, sometimes purchasing at sales, sometimes from individuals, without the possibility of his being able to trace, if it becomes ever so necessary, *when* particular things came into his premises, when they were received, when they went out; and a distinct account could only be made out by referring to the books. It was one unfortunate consequence of the fire that our books were destroyed; though undoubtedly *they* would not have been sufficient, and we might have been turned round at last by their saying, books are no evidence; you shall prove your case strictly, and shew by legal evidence, what was the amount of your stock, and of your loss. But, to say nothing of that objection, the books with the furniture sunk in the same flame; still what we can do, and that we may reasonably be expected to do, that we will do; we shall satisfy you by evidence, that, at least to the extent of the sum insured, we had property on the premises; and here it is hardly possible to give legal evidence, if such evidence as there is should be quarrelled with, or captiously objected to, if the judgment of other brokers is rejected, and positive proof required, it must be almost impossible in any given instance to lay before the court strict legal evidence of what was contained on the premises at the time of the misfortune; but, as I have already observed, what can be reasonably expected to be done, and that you will undoubtedly expect us to do, we, on the part of the Plaintiff, shall

be able to perform. I trust we shall lay before you satisfactory evidence, that, although the goods on the premises might not have been constantly, or at some other times to so great an amount, yet that at the time the fire took place the property there was fully equal to the demand which has since been made; this is a matter for the witnesses to prove, and I trust they will do it satisfactorily.

One thing to be investigated also is, if this account is defective, in consequence of any fraud in the Plaintiff, that is, one of the issues here taken; that it is not only defective in consequence of the peculiar circumstances of the case, but, that it is fraudulently so, that the Plaintiff has made out a fictitious account for the purpose of supporting his demand; of that you will judge from the result of the inquiry, at present it requires no particular comment.

I proceed now to the only remaining issue, that last and most important one, which charges the Plaintiff with having himself set fire to his premises. I hope that was not done without sufficient ground to satisfy any reasonable man that it could truly be said on any pretence whatever. Gentlemen, the fire took place between the night of the 7th, and the morning of the 8th of December, 1807; I believe it first appeared about 2 o'clock in the morning; what the circumstances were I will briefly state: *the family of the Plaintiff had consisted a short time before this of several persons, who, through accidents that will be explained by the witnesses, were not present in Bath at the time of the fire.* His wife was ill, and was gone to Bristol for her health; several journeymen and people who worked under him were not

then in Bath from different causes; one had been ballotted into the militia *, another had gone away ill, who is since dead; that *it so happened that this person (Leworthy) at the time of the fire was living alone*; no other person of the family being with him as was usually the case; you will find, that, on the night of this 7th of December, he retired home between 11 and 12 o'clock; we shall call a person who passed him in his way home; he went to bed, whether he put out the candle, or whether he went to bed without a candle, at present it is not necessary for me particularly to state; however that might be, he went to bed himself, and about two o'clock in the morning the fire broke out. The watchman, who saw him returning home, gave the alarm some time before the Plaintiff made his appearance, but, as soon as could be expected he appeared; and the watchman will tell you *that he exhibited every indication of great alarm* †; that he assisted as far as a man could assist in bringing up the engine; in short, that he conducted himself as any fair and honest person would conduct himself upon such an occasion, after recovering from the first effects of his alarm. In

* Two of Leworthy's men left him, one because Leworthy had no materials for him to work upon, the other because he could not get his wages; neither of them went into the militia until the following year, and one of them resided very near Leworthy's house, and actually assisted at the fire.

† On the contrary, Winter, the watchman, proved that immediately upon his giving the alarm, Leworthy appeared at the window completely dressed, except his coat, and perfectly collected and free from alarm.

this way, Gentlemen, the fire arose; I am not aware that it would answer any purpose to go through a detail of every thing which took place; the witnesses will give you their account, and you will have to collect from what passed at the time of the fire, from what occurred before, or from what has occurred since, for my learned friend will be at liberty to go into the history of this man's life, as far as it bears in evidence, whether we are not justified in saying, that we have been unjustly suspected, and, that we have received great injury in having this resistance made to a fair demand.

Gentlemen, this matter had once gone the length of a reference to arbitrators, a course which was probably the best adapted to it. That arbitration advanced some length, several witnesses were heard, when unfortunately, a dispute arising between the arbitrators, the business fell to the ground. Under these circumstances the Plaintiff had no resource but to bring the matter before you; he courts enquiry, he is willing to have every thing investigated; upon the result of that investigation your decision must undoubtedly depend; but he is fully satisfied that the more this matter is inquired into, the clearer it will appear; for that all the rumours which have gone abroad in this case have no foundation, but in the imaginations of the persons who make them. We shall proceed as speedily as we can to lay before you in evidence the case I have opened.

EVIDENCE

FOR THE

PLAINTIFF.

MR. JOHN CHARLES DENHAM Sworn. Examined by MR. JEKYLL.

WITNESS is Secretary to the Globe Insurance Company, has the papers with him, notice to produce which had been given; viz. an account delivered in to the office, by the parties claiming on the part of Leworthy, of the Plaintiff's loss; the affidavit of Leworthy; and the certificate signed by the Reverend Mr. Crosse and others.

The papers were read by the associate.

The account amounted to £745, and the affidavit stated it to be "a true and just account "and estimate of his (Leworthy's) loss by fire "to the best of his knowledge, remembrance "and belief, and not in any wise fabricated or "exaggerated for the purpose of fraud or impo-"sition".

The account was read as follows:

INVENTORY to the best of my knowledge of the household furniture and stock in trade destroyed by fire, on Tuesday the 7th day of December, 1807, belonging to me William Leworthy.

	£	s	d
In front attic.			
A quantity of feathers, upwards 300lb.	30	0	0
In back attic.			
A quantity of mill puff, horse hair, bed ticking, canvas and webb, &c. &c.	40	0	0
Dining room.			
Beds, mattresses, bedsteads, book cases, picture frames, prints and paintings	100	0	0
Back dining room.			
A bedstead, quantity of blankets, sheets and sheetings, two beds, pillows, bed furniture, drawers, presses, tables, chairs, bed quilts, &c. &c.	40	0	0
Front shop.			
Stock of brokery goods, consisting of drawers, presses, tables, chairs, with a large chest of blankets, and various other articles in the business	180	0	0

	£	s	d
Back room.			
A quantity of china and glass, and a quantity of bed sackings and books; a quantity of brass work for cabinet business; bed screws, hinges, and other iron-mongery work	100	0	0
In the kitchen.			
A quantity of earthen ware, a dresser and writing desk, a plate chest, and kitchen furniture in general	20	0	0
Back kitchen.			
Pans, tubs, buckets, dresser, a quantity of jars, and many other articles	5	0	0
Work shop.			
A quantity of work unfinished, consisting of drawers, tables, bedsteads, book cases, and many other things; two chests of working tools, working benches, &c. &c. a quantity of mahogany, deals, beech, elm, &c. &c. a quantity of glue, and other articles	230	0	0
N. B. A chest in the back room, containing all our wearing apparel; and in the stair case, a quantity of different articles	30	0	0
	£745	0	0

The foregoing is the inventory or statement to which the annexed affidavit refers, as exhibited to me the twenty-eighth day of December, 1807, in the hand writing and figures of the above William Leworthy.

JOHN JELLY, a Master Extraordinary in Chancery.

Bath, Dec. 24, 1807.

I hereby certify, that the above statement does not appear to be unfair.

J. CROSSE, Clerk,
JOSEPH WOODWARD, House-keeper,
JOSEPH ROBERTS, Westgate Street,
A. CLEMENT, Broatt Street.

EXAMINATION *continued.*

WITNESS—In the year 1808 Mr. Wilkinson was Secretary of the Globe Insurance Company; the letter shewn me is from Mr. Wilkinson, as Secretary of the Company, to the Plaintiff, Leworthy.

The letter was read, and stated that the Directors had allowed the claim, and sent a Bank post-bill to their agent at Bath for the amount.

Cross-examined by MR. BURROUGH.

At the date of this letter (Jan. 22, 1808) SIR FREDERICK EDEN was chairman and managing Director of the Company—there was no other managing Director—*Sir Frederick was at this time in Bath* and is since dead—the Bank post-bill mentioned in the letter was sent back again to the Company within a fortnight after the date of the letter—Witness was at that time assistant-secretary to the Company, and

knows officially that the bill was so returned—he is now the Secretary—understands that the certificate, account and affidavit were not sent to the Company in the usual way through an agent, but were delivered at the office by Mr. Cross the attorney, but does not know it positively.

Mr. Serjeant Lens—We understand that was the fact.

Witness—On no occasion did Leworthy attend at the office in town previous to Mr. Wilkinson's letter being sent—No one attended there for the purpose of giving information on the subject of what was contained in the affidavit and account. I was not then attending on the Boards of the Company; but I should have known the fact if it had been so; my situation was such that I must have known it.

Mr. Thomas Heath Wilkinson sworn. Examined by Mr. Serjeant Pell.

In December 1807, Witness was secretary to the Globe Insurance Company—remembers the papers respecting Leworthy's claim upon the office being produced—the papers were an account of the loss, a certificate and an affidavit made by the plaintiff.

Mr. Burrough—Every information that you want from our books you may have.

[A book was handed to the witness, who was directed to turn to the entry of the 7th of January 1808, Policy 17,995.]

Q. At that time who constituted the Board present?

A. Sir Frederick Eden, Bart. Chairman; Sir Theophilus Metcalfe, Bart. Deputy-Chairman; Joseph Dorin; Edward Goldsmid; James Taddy, and G. Abercrombie Robinson.—I perfectly recollect that the question of this loss was taken into consideration, and it passed regularly through the Committees, because a loss passes through three different Committees—The Board of Directors is divided into three different Committees: one committee is termed the Committee of Insurance; another the Committee of Accounts; and the third the Committee of Treasury—a loss goes in the first instance to the Committee of Insurance.

Q. Are the Committees held at any particular distance of time?

A. A claim that is referred to the Committee of Insurance one week, and approved of, passes to the Committee of Accounts the next week; and to the Committee of Treasury the third week; unless in particular cases, as the Board has the power to enter and determine upon a claim at once.

Mr. Baron Graham.—That is, I suppose, in the cases which are referred to the Board at its usual sitting, it is in the power of the Board to commence the business and terminate it at once; they may examine and pass a claim on the same day; but the Committees are not invested with the same power, as the act of any one Committee must have the sanction of the two other Committees.

Cross Examination by Mr. Gazeler.

Witness. This claim was first taken into consideration by the Committee of Insurance upon the 7th of January, 1808; *I recollect no other papers being received, or information laid before the Committee, but the papers that were delivered to me by Mr. Cross*; part of the constitution of the Committee of Insurance is to examine all losses; in the Committee of Accounts the minutes of the proceedings of the Committee of Insurance are read; in the Committee of Treasury the proceedings of the two former Committees are read, and then this last Committee issues drafts for the payment of the money. *Unless something material arises to make it necessary, the subsequent Committees (namely, the Committees of accounts and Treasury) do not inquire into the circumstances that are proved before the first Committee:* Witness does not know when Sir Frederick Eden went to Bath; he never communicated to him when he was going out of town, or where he was going to; *to the best of his recollection not more than a post or two could intervene between the sending down of the bank post-bills to Bath, and their being returned to the Witness in London.*

Mr. Gazeler. Q. Was not the money returned to you by Sir Frederick Eden, who then happened to be at Bath?

Witness. A. *The bank post-bills, which I transmitted to Mr. Marshall, the agent at Bath, for the payment of Leworthy's claim, were returned to me in a letter by Sir Frederick Eden.*

Mr. Serjeant Lens. This is all the evidence I propose to give upon this part of the case, namely, to shew that the formal certificate has been dispensed with by the Company.

Mr. Baron Graham. The question is not a pure question of law, it is a question of fact; and must go to the jury.

Mr. Burrough. This is a very immaterial part of the case, but I must beg leave to say a few words upon it. It cannot be disputed, that, if notwithstanding what your Lordship has heard, there were circumstances of fraud in the management of this certificate, which never came to the knowledge of the Company, and could not by possibility have come to their knowledge; they are not bound by what has been done, so as to give it the effect of dispensation in point of fact; and I am confident that, under any circumstances, their acts cannot amount to a dispensation in law; but first, as to the fact, one thing they could not know, *they could not know who Mr. Crosse the minister was; they could not know who these three other persons were.* The terms of the policy are, that application shall be made to the minister of the parish, and to the churchwardens of the parish; what is the reason of that? why, because the minister and churchwardens of a parish know the circumstances of persons living within the parish; other persons may or may not be acquainted with them. But the Company could not know, but that this Mr. Crosse, who signs himself *Clerk*, and the other people answered to the persons described in

the policy; they acted therefore without knowledge on the subject; *and that want of knowledge is occasioned by the Plaintiff himself; for he sends up a certificate which he knows is obtained from persons not described in the policy: that is a fraud, an abuse of the policy itself, therefore the Company cannot be bound by it.* I admit, that, had they been apprized of all the circumstances, though their acts might be something short of what would really amount to a dispensation, they ought in fairness to be bound by them; but here they did not know, they could not know, and they cannot on the part of the Plaintiff make out that there was the least knowledge of these circumstances in any one member of the Company, or any one of their officers. And I must add one fact (which I can prove in a moment) before your Lordship can decide, viz. *that Sir Frederick Eden being in Bath, and, from being in Bath becoming acquainted with the circumstances, he, as a member of the Board, stopped the bills, and prevented their getting into the hands of the Plaintiff.* It is quite impossible for your Lordship to make up your mind on the subject of this dispensation till your Lordship has heard the cause; I know what they are driving at, on the part of the Plaintiff; but I will tell your Lordship what I propose to do on the part of the Company; if, after the cause is gone through, your Lordship should think we ought to give up the objection upon the dispensation, I won't stand upon it; *if they can fairly succeed upon the rest of the case, they shall have the benefit of the dispensation, though I know they cannot make it out, either in point of law*

or fact. I won't say a word more about the dispensation, if your Lordship tells me at the end of the cause that we ought to admit it; though, if there was fraud in it, *and fraud I undertake to make out in every part of the proceeding*, I should have a right to stand upon the objection at last; still, I make that offer.

Mr. Serjeant Lens. That is taking an unfair advantage of parties; by your own offer, you are not at last to make the concession of yourselves, it is only upon being told by his Lordship that you ought to do it; that is, the utmost length you go.

Mr. Baron Graham. You may either decide this point at present, or leave it to the Jury to be decided by and bye; because, the general complexion of the case may bear upon this question: *what Mr. Burrough offers is very fair, and I am not yet prepared to tell the Jury whether they ought to consider the certificate dispensed with*; the question is not ripe for my doing so; I must first hear the whole case, upon which it will materially depend.

Mr. David Arnott, *Sworn. Examined by* Mr. Dampier.

Witness was an agent to the Globe Insurance Company in the year 1805, 1806, 1807, 1808, and part of 1809, he is not so now—lives at Holt, 9 miles from Bath—he received the Plaintiff's instructions for an insurance in November, 1805; the policy is dated in December in the same year—Witness knew the Plaintiff Leworthy; thinks the first application

respecting the insurance was from himself to the Plaintiff.

Q. Did you accompany Leworthy in looking over his stock, in order to settle what should be the amount of his policy, and did you recommend what sum should be insured?

A. He shewed me his house, which was at that time full of goods, and his workshops, where he had several men at work. I cannot charge my memory that I recommended the sum, *that* is commonly left to the person insuring; he said it was necessary to insure £1000, and I took his orders for that sum; I saw all the goods in his house, it was at that time full. The instructions for the insurance were verbal; but, I sent written instructions to the office, which they have. I used occasionally to deal with Leworthy; I had sons of his under my care after the insurance was made, but not at the time of making it.

Q. By what you saw, was the sum insured a fair sum for him to insure at that time?

A. I am not competent to judge of the value of household goods; I am not an auctioneer; but his house was full of goods. The sum did not strike me as extraordinary; but it is not the custom of agents to inquire into the value—my business frequently calls me to Bath—previous to the fire I had frequent occasion to remark Plaintiff's shop—frequently called at it—I perceived no sensible difference in the stock, but took no particular notice—the house was sometimes fuller of goods than when I saw it at the time of making the insurance—Plaintiff was insured as a dealer in second-hand goods and as

a carpenter; his stock, in my instructions, is divided into two parts.

Mr. Burrough. That must depend on the policy; I object to your talking about the terms in which he was insured; it is necessary you should call for the copy of the policy, which is here. I offer it to you, and that will avoid all misrepresentations.

Witness. I understand Plaintiff to be a broker and carpenter; his house and shop were situated in Walcot Street, Bath; his goods were open to public observation. I called at his house about three weeks before the fire to purchase something; I went into the shop, and I perceived no difference in the goods at that time; after the fire, Plaintiff came over to me at Holt, and I wrote a letter to the Company.

Q. Did you give the Plaintiff instructions what he was to do in order to recover his loss?

A. Yes; I shewed him the conditions at the foot of his policy.

Q. Did you read them all over to him?

A. I did, to the best of my knowledge.

Q. Have you any recollection of your having pointed out to him, that he was to get a certificate from the minister and churchwardens?

A. That condition was introduced very soon before his loss, and whether it was upon that policy I cannot say *.

---

* The witness was evidently mistaken in supposing that the condition alluded to was adopted by the Company but recently before the fire—it was inserted in every policy issued by the Company after the 28th November, 1805—the policy in question was

Q. But I want to know whether you have any recollection of your having directed him to get a certificate from the minister of the parish?

A. I generally told him to conform to the conditions of the policy, which I read to him.

Mr. Baron Graham. It is a material fact which he has spoken to, that this particular certificate was not required by the policy in question; but that the condition was introduced some time afterwards.

Mr. Gazelee. My Lord he is mistaken, it is upon his own policy, and the Plaintiff has so stated it in his pleadings.

Q. You sent him to Mr. Jelly to make the affidavit?

A. I told him to apply to an attorney for instructions.

Q. Do you know whether the new form of policy had then been adopted by the Globe office?

A. The new form had been adopted previous to the fire—I don't know about what time it was adopted, I had but little business for the office; I will not swear it was not adopted at the time of the insurance in question; *after it had been adopted, I never knew the office to issue policies in the old form—when Plaintiff effected this policy with me, there was an agent for the Globe Company in Bath,* Mr. Marshall was the agent.

---

issued on the 25th December in that year, and contained the condition alluded to; the witness must therefore have meant that the condition was introduced recently before the insurance.

Re-examined by Mr. Dampier.

Q. You had an advantage upon any policy that you procured, and therefore you were glad to get any person to insure?

A. Yes Sir, I had five per cent. on the premiums.

Q. You would not send any one to Mr. Marshall, but were glad to take an insurance yourself?

A. Yes.

Rev. Joshua Shaw Crosse, *Sworn. Examined by* Mr. Serjeant Lens.

Witness is a clergyman living in Bath near to the Plaintiff's—I have known Plaintiff upwards of 5 years, during which time Plaintiff has worked for me—do not know how long Plaintiff had carried on business in that place, but he was there when I first knew him—I understand Plaintiff was an upholsterer, a cabinet maker, a carpenter, and a broker; in those four capacities I employed him for more than 5 years—I have many times had occasion to go upon his premises into his workshops and rooms—there was a great deal of goods in the house of every kind—Plaintiff had a wife, and 3 or 4 children residing in his house—I knew him to have 4 or 5 workmen, and he has sent them to work for me repeatedly—I believe they resided in the house, but don't know it.

Q. Without describing particularly what the value of the articles was, can you tell us, sir, when you first remember him 5 years ago, what kind of articles he had, whether they were all new, or of what sort they were—how was his shop furnished?

A. I remember little then; *but during 5 years, having often occasion to go there, I have observed that*

he had more and more goods every time I went to the house.

Q. How many rooms were there, so far as you recollect in which goods were placed?

A. There was a front shop and a back room, and a back shop in the court, a very large shop.

Q. You have yourself been at times in all of them?

A. Yes Sir; as I had occasion—I remember the time of the fire—I was at the door of the Plaintiff's house the day before the fire, and the day of the fire—I was there also the Saturday before the fire—*I did not observe the least diminution of goods, but* I did not go over the house.

Q. In a general way were there articles of value, such as chests of drawers, furniture of that sort there, at the time you are speaking of and when?

A. Yes, there were many—There were two deal wardrobes, very high to the shop, Plaintiff made goods as well as bought others—a wardrobe is the only piece of furniture I never had, and I was in treaty with him for one; I asked him what one would come to, when it was finished, he said 14 guineas, and he said I had better have one—I was not in the dining room on the Saturday before the fire, I only went through the front shop to speak to him in the back room, where I believe he was at work—the back room was not a shop, it was on the ground floor—I have observed bed furniture there, and a great number of beds—I had spoken to him about feathers, as I wanted to buy some, and I went up into the feather room on purpose to look at them; this could not be above 5 or 6 weeks before the fire

—the feathers were kept in the room over the dining room—the dining room was up one pair of stairs—I just put my head into the feather room for a minute, and cast my eye over it—*the room appeared to me to be as full of feathers as it could be* *. I had never seen a feather room before or since—I remember seeing sea-chests there—Plaintiff shewed me 3, they appeared to be of mahogany; I believe they were all 3 of mahogany—my son asked me if I could get such a thing in Bath, for he had lost all his baggage when he returned from Buenos Ayres—he was at my house at this time, which was within a few weeks of the fire—I had spoken to Plaintiff to procure me a sea-chest; he said he had 3, and begged me to call and look at them, and I did so—there was a great quantity of goods in that front room which was used as a shop—I think the goods were mostly manufactured goods.

Q. Were there any planks of timber for the purpose of finishing goods?

A. There were some piled up in one corner of the room; but it was filled with mostly new goods. I observed a great deal of plank for veneering goods—there were articles in all stages of manufacture; some new; some second-hand; things of all descriptions; and timber to make other things as occasion might require—one of the chests which Plaintiff shewed me was full of new blankets, and it could be hardly shut down—I saw a chest of cloathes; it

---

* See the evidence of John Collier, another of the Plaintiff's witnesses, who describes the feathers as being only 3 *or* 4 *inches thick in the room.*

stood very near the other chests, and was quite full too: it was a painted chest—he told me they were the cloathes of his wife and children, and that he had put them by there till they came home—I was at the premises the day after the fire—I recollect the morning of the fire a servant came into my room and informed me of it—at this time Plaintiff's wife was at Bristol under the care of Dr. Goldwyer; she was blind; and the doctor told her, if she would come to Bristol in 3 weeks he would cure her; the children were with her—I passed by the premises within a few hours after the fire; because, as I live above him, I am obliged to go by his house in going to the town—I did not go on the Premises to make inquiry as to the fire, it hailed, and snowed, and rained.

Q. Now, sir, though it is impossible that you should be precisely accurate, can you take upon yourself to say whether the property which you saw there near the time of the fire was worth £700, or thereabouts?

A. I did think it was, because he brought me an inventory.

Q. I am not asking about an inventory: I may make out an inventory containing goods to any amount; but from your own observation and sight, in a rough way as you yourself saw the stock of these articles and wanted to purchase some, can you form an estimate of what would be the fair sum for all that you saw there?

A. *I did think, about the time the Plaintiff's wife went away, that they were worth between £700* and

£800: I was convinced so in my own mind *.

Q. Can you tell us about what time before the fire the Plaintiff's wife went to Bristol?

A. I think it was three weeks.

Q. *And you never observed any diminution in the stock?*

A. *No.*

Q. You are the Mr. Crosse that signed that certificate?

A. I am; but I beg it may be observed, that I did not sign it as minister of the parish; I signed it as a neighbour—I was not minister of the parish; I don't know who was; but I believe the Rev. Charles Phillot.

Cross-examined by Mr. Burrough.

Q. You live in the parish of Walcot, the adjacent parish to St. Michael's. You say that you did not sign the certificate as minister of the parish, though you thought proper to add, *clerk: J. Crosse, clerk?*

A. Certainly.

---

* In February in that year, when the Plaintiff was certainly in better circumstances, the whole of his stock in his house sold for about £140 at public auction (i. e. the whole was put up; these were actually sold, goods to the amount of £90, and the Plaintiff bought in the remainder at about £50) which renders it highly improbable, independent of the conflicting testimony, that, in the same house, at the end of that year, his stock should have been worth between 700 and £800—had the fact been so, it would have made so sensible a difference in the appearance of the premises, that it would have been proved by the whole neighbourhood; not merely, as stated by Mr. Crosse, *that there was no observable diminution*; but, that the stock had most conspicuously increased, and that the Plaintiff was evidently a prosperous tradesman.

Q. But at that time you did not know there was any distinction between signing as minister of the parish, and not as minister of the parish?

A. I certainly did.

Q. How.

A. I signed it as a neighbour and as a clergyman; I signed only clerk.

Q. But did you quote to the Plaintiff any conditions of the policy of insurance?

A. Insurance is the thing I know the least of any thing in the world, I never read a policy in my life, and never insured.

Q. The Plaintiff came to you for the purpose of getting a certificate?

A. He came to me among others.

Q. To sign a certificate?

A. To sign an inventory.

Q. I will tell you what you signed—"*I hereby certify that the above statement does not appear to be unfair*, J. Crosse, *Clerk*.

A. I did certify that.

Q. He came to you for the purpose?

A. He did so, I did not go to him. *I was at Leworthy's door the very day of the fire*—I did not go in then, but called to him; he was in the back room.—I saw no room that day but the fore shop; I did not go up stairs after I had seen the feathers—*I did not observe any diminution of goods in the shop on that day*; I only went to the door; I saw the same kind of goods there as I had seen before, upholstery goods and cabinet makers goods; it is impossible for me to specify what kinds of upholstery goods there were, I only went to the door and called

to him; he came out directly, I did not perceive any diminution—did not look for the purpose of seeing what was there—there was nothing at the time to call his attention to it.

Q. Was not this front shop so full that you could not squeeze through it?

A. I did not go through it that day, but I have found it frequently so.

Q. But that day, was it not so?

A. I don't say it was so that day; I speak from memory.

Q. Have you never said, and sworn, that it was so full, that "you could not squeeze through side-"ways?"

A. *No, I don't recollect that I did.*—I don't know that I can specify any one particular article that I saw in the shop the day of the fire, *because the shutters were up*—I won't specify any such thing; I did not look into the shop with any such intention—I think I called there also the morning before this—I only went to the door then, and called him, because I knew that he sat in the back room—I saw no more on that day than I did the day afterward; I was there on the Saturday before this—I saw nothing very particular on the Saturday, because after his wife went away, he used to keep the shutters up, and when he went out he locked the door; *three weeks before, I saw the fore shop full of goods*—I was all over the house at the time I went to look at the feathers—that was 5 or 6 weeks before the fire.

Q. But between the Saturday that you speak of, and the time you were all over the house, were you there at all?

A. I went by a great many times, but did not go in—It could not be more than 5 or 6 weeks from the time I saw the feathers, to the time of the fire, because I had said to Leworthy long before, that whenever he had a good lot of feathers, I should wish to have some; he told me of these feathers, and I went home and told my wife; she said, that she wanted 12 pounds weight to fill the beds as company was coming, this was 6 weeks before the fire; I don't know on what day of the week—I went into the upper attic of Leworthy's house, over the dining room; it seemed to me as full of feathers as it could be—there were three windows in the room—it was 9 or 10 feet long—it was not a very large room; I don't think the house was more than 20 feet wide—I think the whole airy of the room is larger than this table [the table of the court]—I should suppose it was 9 or 10 feet high—Plaintiff only opened the door just wide enough for me to put my foot in; I just cast my eye about the room, and I observed the feathers appeared to be about 2 feet deep at the corner where I was; at the other end of the room *they were piled up two thirds toward the ceiling* *—I saw nothing of that room afterward; I went the same day into the dining room to look at a wardrobe which was there; I think it was a second hand one, besides the wardrobe, there were goods in the room of every kind—there were wash hand stands, a bedstead or two;

* The Plaintiff claimed to be paid for 300 pounds weight of feathers; but no one witness, on either side, saw any appearance of feathers at the fire, though they are represented to have been in the attic, and would therefore be more easily scattered, which would have exposed them to observation.

the room was quite full; I went into no other room; but I observed goods on the landing place; old goods, second hand goods, there were beds there; I mean bed posts and bedsteads—there was a considerable quantity of goods there and planks, and what they call *stuff* piled up—*I could hardly pass*—I don't know that I saw any other goods that day except in the front shop, as I was obliged to go through the front shop—the front shop was full of goods, mostly of manufactured goods—this was all I saw on that day.

Q. Now, Sir, we will take the 6 weeks, the time you speak of, be so good as to tell me, according to the best of your judgment, if you have any judgment on the subject, what was the value of the goods which you saw in any one of the rooms on that day?

A. I do imagine the goods in the fore shop were worth about £200—the feathers in the upper attic, I don't at all know the value of—I have no idea of the value of them; I know they are a good deal dearer than they were at that time, I believe they are worth 4*s* or 4*s* 6*d* a pound now—I do not know the quantity of feathers there was in the room, but I should judge they were enough to fill 4 or 5 bed ticks—I have been told, and, I believe I asked Leworthy the question, how many pounds of feathers are required for a bed, and that was 60lbs, at 3*s* 6*d* a pound—the goods I saw in the landing place might be worth £30 perhaps; I imagine the goods in the dining room were worth £100 at least;—on that day I think I saw no goods in any other room to be able to put a value on them; the door of the back room, up one pair of stairs was open, and there appeared to be goods there; but I did not see them

to put a value upon them at all—I did not go in—this was 6 weeks before the fire—*there was no apparent diminution at any time; I rather thought I saw an increase of goods every time I called there; I think about 3 weeks before the fire the house was fuller of goods than at any other time—they were increasing to that time*—I observed the beginning of the increase in that year, 1807, because he took down the partition of the shop, and threw it into the shop.

Q. *And now, upon your oath, you state that you believe there was an increase of goods up to the time when his wife went to Bristol?*

A. *It seemed so to me, and I believe it.*

Q. Then as you speak of an increase, there must have been a time when you observed a material difference.

A. Yes.

Q. When was that?

A. That was several years before.

Q. But in 1807?

A. *I never observed so many goods there as in that year of* 1807.

Q. *Then you really believe, that during the whole of the year* 1807, to the time of the wife's going away, 3 weeks before the fire, *he had as many goods as he ever had?*

A. *Yes, and I believe more* *.

Q. Upon your oath, do you know any thing of the value of the goods you saw, except from the paper which the Plaintiff produced to you?

---

* It will be found that at this time the Plaintiff was returned pauper in the parish books, and excused the parish rates—and had arrived at a state of the most extreme poverty.

A. I cannot say I do; *I form my opinion from that paper merely*; but, having furnished houses and bought goods, I know a little of the value of them, but not much.

Re-examined by Mr. Serjeant Lens.

Q. You were asked just now by my learned friend, whether you had any knowledge of the value of these goods, except from the inventory, and you answered that you had not; but you yourself have said that you saw the goods that were described in it?

A. I did.

Q. Then you had other means of knowing what was their value?

A. Certainly.

Q. Then it was not merely from an inventory on paper, but from your own eye sight, and the property you saw, that you formed the estimate you before mentioned?

A. I formed the estimate chiefly from the inventory, which the Plaintiff and I went through together, and I questioned some of the articles.

Q. A short time ago, I took some pains to desire you not to tell me what you learnt from the inventory, but to confine yourself to the best judgment you could form; from what you saw, you then told me, that, according to your judgment, the whole amounted to seven or eight hundred pounds?

A. Yes, sir.

Q. Is that the judgment you form from seeing the articles yourself?

A. I form my judgment from the inventory and seeing the goods; I went through the inventory

article by article, and found fault with some of them, and he convinced me they were not over-charged.

Q. Then I understand, you did not form your judgment wholly from the inventory; on the contrary, you were dissatisfied with some parts of the inventory, and corrected it—you saw the inventory and the goods, and your judgment is formed from a comparison of both?

A. *My judgment is formed from both, but chiefly from the inventory.—There was no visible diminution of the goods the day before the fire*—I observed the shop sufficiently, that it must have struck me if there had been no goods in it; I think I should have observed it if there had been any sensible diminution—I signed my name to the certificate "J. Crosse, Clerk;" the certificate itself is of my writing, Plaintiff was so nervous; and he told me he could not write, and begged me to write it.

Q. Was it of his dictation or yours?

A. Yes.

Q You say, you yourself had never seen any policy, as far as you recollect?

A. No.

Q. Then how came the certificate to be written in this way? who suggested the words in the form in which it is written?

A. Some body had suggested them to him, and I believe he suggested them to me.

Q. Was it some person present that suggested them to him?

A. No person was present, he came to my house.

Q. And then you wrote down this, certifying the contents of this document?

A. I did; I thought I was justified in using such expression as that.

Q. What was the Plaintiff's general character for honesty?

A. I don't know what Plaintiff's character was in the neighbourhood, whether honest or dishonest; I only know the opinion I have of him myself—that opinion is formed entirely from my own individual knowledge.

JOHN COLLYER *Sworn. Examined by* MR. JEKYLL.

I am a journeyman cabinet maker—was employed as such by Leworthy, about 14 or 15 months, at different times—*I left him 4 days before the fire*—I always thought him to be in a considerable line of business—he employed 3 or 4 men on an average, sometimes he had 2 or 3 working out—I was working off and on with him; Green and Horsey were workmen employed by him; Green left him, I suppose about 6 weeks before the fire—GREEN *went away because Leworthy would not give him a fair price for making drawers* *—HORSEY *went away*, I suppose, 3 *or* 4 *months before the fire*; I had no acquaintance with him—I knew the man, *he left*

---

* Leworthy stated on oath before the arbitrators, that Green left his employ in order to go into the militia—it will be seen that Green in his evidence contradicted both accounts, and stated, that he left Leworthy *because there were no materials to work upon*; he never had a difference with Leworthy upon the subject of wages, and did not go into the militia until the following year.

Plaintiff for the same reason as Green *; one James Barnes also worked for him, who went away sick and died; he left Plaintiff about the time that I was at Plymouth, which was in November before the fire —while in Leworthy's employment I had every day occasion to go over most part of his premises; sometimes 2 or 3 times a day—when Leworthy was absent, if my mistress did not know the value of any goods she would send to me to know the price—about 4 days before the fire I left Plaintiff's employment, and went to work for a Mr. Elliston; I had left some work unfinished at Mr. Elliston's, and I went back to finish it—I left work unfinished at Leworthy's.

Q. On the day you went away or thereabouts, did you go over the premises of Leworthy in the usual way?

A. Yes—during the whole 14 months that I worked for Plaintiff, *his premises were filled with a considerable quantity of stock*—on the day I last went over the premises, there appeared to be the general quantity of stock usually upon the premises—the shop had an open window to the street, a long sashed window, I believe 3 sashes were in front—*the day before I left his employment the shop was as full of goods as I had usually seen it for the 14 months.*

Q. Visibly so to all that past by if they looked through the window?

* Horsey in his evidence stated, that he left Leworthy *because he could not obtain payment of his wages*, and had a wife and family to support. He positively denied having had any difference with Leworthy respecting prices.

A. Visible to every one—In the shop there was a large mahogany wardrobe, which, I should suppose, was worth upwards of £10; I don't know the value of every article.

Mr. Jekyll. I don't ask you the value of every article, but your general judgment, as a man used to the trade.

Q. Did you see any feathers?

A. Yes, sir—In the front attic there was some feathers, they were put over the room; there were feathers brought in, I suppose, about 6 weeks before the fire—I assisted in bringing them in; *there were three bales*, one of them was a very large one, as heavy as both of the other two—witness cannot form any judgment of the weight of the 3 bales, no more than by just lifting them up stairs; *I suppose the big one would be 4 or 5 hundred weight, the others not half so heavy—they might be two hundred**—they were put into the back room; after the bales were opened, they were some of them brought into the front attic—they were first put into the back attic, and afterwards some of them were brought into the front attic to air, before they were put into beds.

I suppose this was 6 weeks before the fire—was not in the front or back attic so late as 4 days before.

---

* Leworthy stated, that he had not sold any of the feathers; and, according to this witness, there must have been at least *eight hundred pounds weight*, although Leworthy stated about three hundred pounds weight only—in a subsequent part of this witness's examination, he says the feathers lay 3 or 4 inches thick all over the room; and in the examination of Mr. Crosse, another of Leworthy's witnesses, he stated that "*the room appeared to be as full of feathers as it could be.*"

the fire—I had been there 2 or 3 times during the time I worked for Leworthy.

Q. What was the latest time before you left Leworthy that you looked into these rooms?

A. A fortnight, sir.

Q. Did you see feathers in those rooms at that time?

A. Yes, sir—I am not a judge what quantity there was then in the front attic; *they appeared a great many—they lay 3 or 4 inches thick, all over the room* —I saw them in the back attic; there they were not out of the bales, not all of them—I don't know what they sell for a pound—the feathers were of two different sorts—I saw the feathers within a fortnight of the fire.

Q. Things were sold occasionally, and things came in occasionally?

A. Yes, as usual, when I left—The day I left, I do not believe there were so many goods as there had been during the 14 months that I knew the premises; because there was a parcel of old things sold, and a great many new ones brought in—I should think there was more in value.

Q. But as to the general stock; did it appear to you at that time to be of the same general value as the stock which you had seen there within the 14 months?

A. *I saw no difference*—I have known Leworthy better than 4 years in that neighbourhood—I never heard any thing of him, but that he was a hard-working honest man; that is the general character I have heard of him.

Cross-examined by Mr. Gaselee.

I worked for Plaintiff 14 months, it might be more; the last time I worked for him was 4 days before the fire: I am sure of that.—I recollect that all the articles I have been speaking of *as in the dining room were there a week before the fire*; there might have been a great quantity of goods put in the dining room; *the quantity there, if it had been placed round the room, was sufficient to have filled 2 or 3 rooms*—this was the front dining room—it was not full; but *the articles were piled one upon another, and reached pretty near the cieling* *; they took up two thirds of the room. All the articles I have described were in the house a week before the fire—will swear they were there 4 days before the fire.—At the time the feathers came to Leworthy's there were a few others, but not so many as would fill two pillows; there was a great quantity of mill puff and flocks at the time they came in—I don't know that there was 4 hundred weight of feathers there before these came: I don't know the weight of what was there before: *perhaps I might have said there were 4 hundred weight there before*—I don't know that I said so; it is a great while agone; and when I looked at them I never thought to hear any more of it: *I might perhaps have said that two of those bags weighed 5 hundred weight a piece; I am not confident.*

Q. Where might you have said it?

A. *I don't know where it was*; it was a great while

---

* Winter, the watchman, who stood upon the parapet wall when the flame came into this room, proved that there was not a single article of furniture in it.

agone—I have been examined before upon that occasion—I might have said that two of those bags might be 5 hundred weight each, and that they might not be 3 hundred weight *.

ROBERT JILLARD *Sworn. Examined by* Mr. SERJEANT PELL.

I live at Bath; am a weaver and pawn-broker—do not live near the place where Leworthy lived—knew Leworthy before the fire—I have known him more than 20 years: I never heard not a blemish upon the man's character in my life—I have been at his house a good many times—it might be a month or 6 weeks previous to the fire that I was there the last time—*Leworthy took me through every room in his house at that time*—I didn't take a proper inventory of the stock at all, but, *judging from my eye, my idea was, that for the valuation of the goods, a thousand pound would not pay for the goods at that time:* I thought so in my judgment—Leworthy has had occasion to come to me as a pawnbroker—I have served him many times as a regular customer—I have lent him money upon pawns oftentimes—I remember when the fire happened; I saw Leworthy the same morning about 8 or 9 o'clock; he was then at one Mr. Jones's, a publican; he seemed in a very wretched state crying; he was crying and lamenting,

* When examined before the arbitrators, this witness made the quantity of feathers amount to 1650 pounds weight, a quantity that the whole house would scarcely have held.

By one of the Jury.

Q. At the time you went over the premises with Leworthy, did you go with a view of taking an inventory, and forming a valuation, or is it merely by accident that you are enabled to speak to the value of his stock?

A. We went upon no business at all; I went upon some business into Walcot Street, just above Leworthy's house, and called in accidentally.

Q. You didn't go there with any view to set a value upon the goods?

A. No, I did not.

Q. Then what could lead you at that time to make such minute observations, as that you should now be able to give an account of the value of them?

A. *I took particular notice of every thing he had in his house at that time.*

Q. Did you form your judgment of the value of the things upon the premises at the time, or have you formed your judgment since, upon a recollection of what you then saw?

A. What my judgment was then, was called into question of what the value of the goods was.

Q. *Do you mean to say, that you were considering what this value was, even at the time that you went through the rooms?*

A. *Yes, sir.*

Mr. Baron Graham [at the request of Mr. Serjeant Pell.] Q. Did you form your estimate with a view to ascertain how far you might safely permit Leworthy to extend his credit with you?

A. No, my Lord, it was not.

Q. What was it that induced Leworthy to carry you over his house at that time?

A. *He, knowing me, took a pride in shewing me what he had got, and wished me to go into his store rooms.*

Mr. Serjeant Pell—Q. Had he at any other time shewn you his goods from a similar feeling?

A. Oftentimes; whenever I called at his house he took me through his rooms.

Mr. Baron Graham—Q. Where the furniture was deposited?

A. *Every room in his house, my Lord.*

Joseph Woodward *Sworn. Examined by* Mr. Dampier.

I live in Bath—I have known Leworthy between 8 and 9 years; I suppose his character has been very good, from whatever I have heard of it, for honesty and good civility—I was frequently upon his premises for 2 months before the fire happened; the last time was about a fortnight before the fire, when I went through the front shop, it was very full at that time, as full as usual; I perceived no difference—he had some work in hand for me, but not a fortnight before the fire—I went for it into the then back shop—it was a bedstead, and I saw other bedsteads of a similar kind making round the shop—I observed different kinds of timber in the workshop—but I am not a judge—I understand that just before the fire, Leworthy's wife had left Bath, in consequence of a disorder in her eyes—I saw some timber under the workshop

—I have been in the back parlour; there were goods there—the furniture in the shop was new and old; as near as I can recollect, they were mahogany chairs and bedsteads, lying a top one of another—there were some looking glasses there—*the appearance of the shop and furniture was such, as to indicate a man that was going on well in his business*—I saw him on the night of the fire; we had been at a club together—I left him at the club at half-past 10—the club room is five or six hundred yards from his house, for what I know—I signed the certificate which was sent up to town.

ROBERT FLOOK *Sworn. Examined by* MR. SERJEANT LENS.

I have known Leworthy I believe from the latter end of the year 1783, or the beginning of 1784—I am a shoe-maker and live at Bath—I never heard any thing disrespectful of Plaintiff in my life, nor ever experienced any thing dishonourable from him—*I was at his house on the Friday before the fire happened*—I had frequently been on the premises at other times, and seen what was there—*when I was there on the Friday before the fire*, I went through the front shop, and into the back room behind the shop.—I particularly observed a deal clothes press, it was a sale article—*the room was full apparently, as it usually had been*—I have been in the habit of going there—there was no difference particularly that struck me—I went into the other room to speak to Leworthy himself, he was there doing something to a small bedstead—there was many things in it, which I cannot say—as far as I recollect, it exhibited the same

appearance as it had done in the former times, which I have been speaking of—I was in the room about 10 minutes—between 3 and 4 years before this time, I had occasion to purchase between 3 and 4 hundred pounds of furniture to furnish a house; part I purchased of him, and part of others; in August and September 1803, I bought matter of £90 worth of him.

Q. Was the Plaintiff's furniture in much the same state when you last saw it, as when you bought that large stock?

A. It was much so; it might be more, and it might be less.

JOHN TRENT *Sworn. Examined by* MR. JEKYLL.

I live at Bath—am a painter of furniture in an ornamental way—have know Leworthy 4 or 5 years—I never heard any thing against him till since the fire.

I was employed by Leworthy to paint some furniture for him 2 *or* 3 *days before the fire*—they were bedsteads—*and on the very night before the fire* to paint an auctioneer's stand—Leworthy told me he was going to take the business of an auctioneer—I do not work at his house, but I went in after it, to take it home with me; this was between 8 and 9 in the evening—*the very evening before the fire happened*—we took the stand out of the furthermost corner on the left hand side of the shop—*we were forced to remove a great number of goods to get it out*—and in so doing a great many things fell down, what they were I cannot say—*the shop was fuller at this time*

than I ever saw it *—when I came to the door it was a-jar, as it usually is.

Cross-examined by Mr. Burrough.

I only saw the shop that night, I never was in the whole of the house in my life—I think I recollect that 2 years ago I was in the dining room; I was in the workshop several times—I cannot say how lately before the fire; I cannot say it was within a month or six weeks, but I am certain I was there in the space of 6 months—the workshop was then as full as ever; Green and Barnes were at work there a long time—the shew shop was fuller than ever I saw it before.

John Mapleton *Sworn. Examined by* Mr. Serjeant Pell.

I knew Leworthy in 1807—*was at his house on the morning before the fire happened*—went through the shop—had been there before—the shop appeared, in respect to the quantity of goods, to be the same as when I had been there before—appeared to me to contain the same quantity—I went into a little back parlour where Leworthy was then at work; he was making a turn-up bedstead for a press—this was between the hours of 9 and 11 in the morning—at that time I did not go into any other part of the premises, but had been before; it might be from 4 to 9

* This was the very night before the fire, when it will appear, by the Defendant's evidence, that the shop, instead of being full of furniture, as represented by this and other of the Plaintiff's witnesses, was in fact nearly empty.

months, I cannot positively say—I was then in the front dining room, which Plaintiff made a ware-room of: it was well stocked—the goods were for sale to the best of my knowledge, I don't know any thing else—I went to the house on the Monday morning, the morning before the fire happened, between the hours of 9 and 11—I went there to pay Leworthy some money—there had been a dispute between us of half a crown, and the previous morning there had been an altercation between us—I have known Plaintiff near 5 years—I never heard any thing disrespectful of him in my life—I never heard any thing else but that he was an honest man.

Cross-examined by Mr. Gaselee.

It was from 5 to 9 months that I had been in the front shop, before the last time—the sum he paid Leworthy that day was half a guinea.

John Mott *Sworn. Examined by* Mr. Dampier.

I am a sawyer—worked for Leworthy 4 or 5 years—remembers the fire—worked for him for above a fortnight before the fire, in cutting deals, cut at different times within 3 weeks before the fire; I suppose ¾ of a hundred in the course of the last week before the fire—had cut some beech stuff for him—has cut a good deal for him at different times—in the last 3 weeks I cut 5 or 6 hundred feet of beech—some I put under the shop, and some I set round the yard—when there I saw other things—wood for veneering—used to go through the front shop 2 or 3 times a day—that was as full as ever I saw it all the time I was there—the furniture was such as chairs

and tables, chiefly new; there was furniture of all kinds.

Cross-examined by Mr. Moore.

I saw the shop last about a fortnight before the fire—cut the wood for him the last fortnight and week before.

Edward Mills *Sworn. Examined by* Mr. Serjeant Lens.

I have known Leworthy about 20 years; he has always borne the character of a hard working, industrious, honest man—I have been always acquainted with him since he was at Bath—I used to work for him frequently—he has lived in Walcot Street 4 or 5 years—I am a carpenter and joiner by trade; but I used to work for him in the upholstery line—sometimes I was used to work for him most weeks, and sometimes not for 3 months together—during that time I have seen his stock—it was a very good stock—within a few days before the fire, I passed the shop, and there was a great quantity of goods; there appeared to be the same quantity as I had seen before—the shop was always full when I saw it; and it was the same when I last saw it.

Q. I don't know whether you are capable of forming any general judgment of the value of the stock?

A. I never looked nigh enough into that—the stock consisted of bedsteads and tables, &c. and a number of beds and mattrasses—I went to make mattrasses for him upon a Sunday morning, about a fortnight before the fire—I made them in the front attic; that was the room in which the feathers were;

there were enough to make 7 or 8 common beds—they appeared to be goose feathers from what I saw—I saw some timber in the back yard—Plaintiff made things for himself as well as dealt in articles made by others—some of his articles were new and some old—at the time I am speaking of, a fortnight before the fire, I went into the workshop to get a chalk line for the purpose of marking the mattrasses—I was not in the workshop above half a minute, but there appeared to be a good deal of unfinished work, such as drawers and bedsteads, it appeared to be in the regular way as it usually was.

ALEXANDER BARNET *Sworn. Examined by* MR. JEKYLL.

I live at Bath—I have known Leworthy 14 or 15 years—I never heard any other, than that he was an honest man; he behaved very honest to me in his welfare—his general character was that of a hard working honest man—my employment is to carry goods—I keep a horse and cart—I remember carrying to Leworthy's, from Mr. Saxy's in Northgate Street, 3 joggetts of goods, they were not large loads—to the best of my knowledge, this was about 3 weeks before the fire—about a fortnight before the fire, I carried two loads of second hand furniture to Leworthy's, from Bath Easton—and 8 days before the fire, two loads of second hand furniture from Mr. Strong's—for the space of 5 years I was employed by Leworthy, while he had any goods to carry in and out, when I was at home—during this time, I never carried a bit out of his house—of the 2 loads that were carried there 8 days before the fire, we left a table and dif-

ferent odd things that I can't recollect, but of kitchen utensils, in a little bit of a court walled round before the door—the front shop was so full that I could not get them in—I helped to carry the goods into the back shop, that is, the back parlour they call it, into the front shop and the passage—the front shop and passage were full of goods, so as we could not stow all those things in—I never went upon the premises unless when I hauled goods, and then I generally went into the back parlour or front.

Q. The last time you were there, 8 days before the fire, did the goods appear to be as much in quantity as when you had seen them before, and when you had been there with other goods 3 weeks before the fire?

A. *There were rather more, for we could not get all the things in.*

JOHN WILCOX *Sworn. Examined by* MR. SERJEANT PELL.

I have known Leworthy about 10 or 12 years—he always behaved very honest to me, and I cannot say any thing, but that he behaved honest to other people—I was at his house 3 or 4 days before the fire happened—I had been there some months before—the last time I went only into the front shop—there was 2 chests of drawers of mahogany that I saw quite new, this was the Friday afternoon before the fire—the drawers appeared to be of value—there were 5 press bedsteads.

MR. BARON GRAHAM—Q. Was there nearly the same stock that you had seen before?

A. Yes, my Lord.

Witness remembers seeing brass work there, it was in a chest—brass and iron work—the brass work was such as is used in furniture to the best of my knowledge—what I saw in the chest, it might be of the value of £50, the brass and iron work together.

JOHN READ *Sworn. Examined by* MR. DAMPIER.

I know Leworthy—have been employed by him as an accountant, to make up his accounts and to make out bills.

Q. What were the times you were usually employed to make them up to?

A. Generally to Midsummer and Christmas, twice a year occasionally—at other days, I was employed to make up Plaintiff's books after Midsummer, 1807—I was engaged to attend him at the ensuing Christmas, provided the fire had not taken place, for the purpose of making up his books half yearly—I returned the ledger 3 or 4 weeks after Midsummer—when I had it to make out the bills—the Plaintiff took the day-book himself—I kept no copy of the result of his accounts—I gave him all his papers.—About 6 weeks before the fire I saw the books upon Leworthy's premises—the amount of the last half-year's bills owing to him, to the best of my recollection, was about £600.

Cross-examined by MR. BURROUGH.

Q. You are speaking of the half-year from Christmas 1806 to Midsummer 1807?

A. I am.

Q. Did you ever take an inventory of the Plaintiff's stock when you made up his accounts?

A. I never did.

JOHN COTES *Sworn. Examined by* MR. SERJEANT LENS.

I have known but very little of Leworthy till *the day the fire happened*—I called at the shop—it was on the Monday between 1 and 3 o'clock—I was passing by as business called me to do, and saw an article of furniture at the door that I thought would suit me, on which account I asked the price of it—the price I thought too dear—Leworthy shewed me into the front shop, and *I saw a great deal of furniture* and other articles of the same sort as what I saw on the outside.

Q. Did you deal for the articles that attracted your notice?

A. I looked at two others, and turned it in my mind, and said I should call again on the morrow—I didn't buy any thing.

JOSEPH ROBERTS *Sworn. Examined by* MR. JEKYLL.

I am a Venetian-blind maker—live at Bath—have known Leworthy 7 or 8 years—his character in his neighbourhood is that of an honest hard-working man as I know of—it might be three weeks or a month, or more, before the fire, since I was upon his premises—whenever I went there I saw it very full of different goods.

Q. Up to 3 weeks of the time of the fire did there appear to you to be the usual quantity of goods as at other times?

A. I didn't take any particular notice of it; I most generally found it very full of goods whenever I went there.

Cross-examined by Mr. Gaselee.

It might be 3 weeks, a month or 2 months, before the fire that I was there the last time: it was very full of goods then.

Re-examined by Mr. Jekyll.

Witness denied signing the certificate—lives in Westgate Street.

Q. Then look at that paper, and see whether you did not put your name to it—is that your writing?

A. Yes, it is.

Q. Have you any doubt now that you have seen the paper that that is your signature?

A. No.

Abraham Clement, *a Baker, Sworn. Examined by* Mr. Serjeant Pell.

I knew Leworthy's House: *I was there the morning before the fire*—I served him with rolls—it was about half past 8, or from there to 9, that I was at the house—I went into the shop—had been there frequently before—*the shop appeared to be fuller that morning than it had been before*—going along the shop there was not so much room as at other times—I went through it to the back parlour, where he was at work—I have known Leworthy more than 2 years—I have never heard any thing of him but good character and honesty, and a hard-working

man, and never found otherwise by him—I signed the certificate.

WILLIAM SARTAINE *Sworn. Examined by* MR. DAMPIER.

I know Leworthy very well—I am a watchman—I perfectly well remember the night when the fire was at Leworthy's house—on that evening I was on the watch near his house—saw him returning home that night, and spoke to him—did not walk with him to his door, but within 3 or 4 houses of it—this might be at about half past 11—Plaintiff was very sober—I smelt fire towards the morning between 1 and 2—I followed the scent, and found it came out of the shop-window of Mr. Leworthy's house—then the watchman that stood above me cried *fire*—I run back as fast as I could to the watch-house for an engine—Parsons, Miles, and the witness got a small engine that was there—as they were coming along Walcot Street toward the fire, they met Leworthy running down as fast as possible he could—I took notice of his dress, his stockings were all down about his shoes—I cannot say whether he had any waistcoat on or not; *his shirt was all loose*—I believe he had a coat on—he was not in the same state of dress as I left him in when he went into his house—Plaintiff rendered as much assistance as he possibly could toward getting the engine to his house—we got on the faster by his assistance—when we met him, he said, for God's sake make haste, for my house is all on fire, and will be burnt—he said, make haste with the engine, or my house will be burnt—he seemed vexed very much and in a crying state—

I assisted in playing the engine upon the premises—Plaintiff was with our engine, and was assisting in bringing water.

Q. When you came to the fire, was the workshop at the back of the dwelling house then on fire?

A. I didn't go round; I was at the engine all the time—the fire raged very much indeed, in a very rapid state—I thought it was deal burning by the snapping—Plaintiff gave as much assistance as a man in his situation could.

Cross-examined by Mr. Moore.

Leworthy had no candle that I perceived when I first saw him—I had a lanthorn—Plaintiff did not light a candle at it—he went from me without a candle.

Richard Parsons *Sworn. Examined by* Mr. Serjeant Lens.

I am master of an engine belonging to the Bath fire offices—was night-constable at the watch-house on the night of the fire—on that night I was at the watch-house door, I heard the rattles spring, and I heard *fire* called; I said to Miles, here is a fire, let us get the engine out; by that time we had got it partly out the watchmen came down—the last witness was one of them—I got the engine up to them, and catched hold of the long branch (which directs the water) and the leather, and took up a hatchet and went before the engine—I suppose the engine might be 400 yards from Leworthy's house—I met Leworthy coming toward me, while I had the branch

in my hand—he run to me, and begged me for God's sake to make haste, or he was a ruined man for ever —I runned on, and he got back behind me to help the engine up—his clothes were very loose about him, his shirt bosom all open; I didn't take particular notice of him.

Q. When you came to the spot, where did you first observe the fire to be?

A. It came right out of the shop window from the chimney stack side; it came out in a large body through the front shutter, and likewise through the front door way.

Q. Did you begin as soon as you could to play the engine?

A. By the time the engine was got full of water, the leather pipe put on, and they had began to play, I could discern that it was half burnt.

Q. At that time had you observed fire in any other part of the premises?

A. No other part but the shop; we had the command of the whole shop—It was a lightish night—the fire made a great light—*the furniture in the shop was piled up; I played upon it* * when it was burning to save it; but I saw I could do nothing, and tried to save the staircase; for if I could have saved the staircase, I could have saved the rest of the house —I observed fire no where but in the shop—I played upon the fire that was burning toward the staircase, to prevent its getting up stairs.

---

* This account was positively contradicted by the Defendants' witnesses.

Q. This was after you had seen the furniture piled up in all parts of the shop, and had played upon it?

A. The furniture was what I first came to.

Q. Did you succeed in saving the staircase?

A. It was impossible, the fire had such strength of burning, that it burnt all the way up the staircase, it sucked it all up, and the wind drove into the door and blew it back *.

Q. You yourself saw the furniture piled up in the room, the door being open, and the light such as you describe it?

A. *I did see it.*

Q. I understood you to say you played upon the furniture.

A. I did—There was another engine came up in the course of 20 minutes after I was playing; it was St. Michael's engine; and just as that engine was come up, some persons applied to me to take my engine round to their assistance, they said the work-shop was catched, and the stables would be burnt; I said I could not do it; for if I do, Mr. Linnel's house will be burnt down—I sent the other engine round—the stables were on one side and the shop on the other, back to back—I don't know whose stables they were—the other engine went round—I could not spare my engine, or both houses would have been on fire at once—the wind blew the whole morning in upon the premises, so as to blow the fire upon the back parts.

---

* The wind was the other way.

Q. Do you know whether St. Michael's engine did go round and play upon the part they described?

A. Leworthy went round, and I heard he played with it, but I didn't see it.

Q. Before this Leworthy had been working at your engine?

A. He was getting water—I think the time the roof fell in might be $\frac{3}{4}$ of an hour after I got there—I was obliged to play upon Mr. Linnel's house, for his lintels were on fire—I exercised my judgment in playing either upon the immediate fire or the adjacent premises, to prevent the fire spreading—Linnel's house would have been burnt down if I had not played upon it—it is a public-house, called the Bladud's head—it was impossible to do more to save the premises than was done—Leworthy did all he could while he was with me—he was very active.

Cross-examined by Mr. Gaselee.

Witness. I fancy it blowed that night about west, some where thereabouts—there is a draft in the streets which makes some difference in the wind from what it is when it is open—the wind was north-west; I am positive of that by the way in which it blew the smoke—witness saw no lighted candle there—saw no person in the front of the house with a lighted candle.

Re-examined by Mr. Serjeant Lens.

Witness. As far as I recollect the wind was west—I saw the wind blow in upon the back parts of the house.

THOMAS HUMPHRIES *Sworn. Examined by* MR. JEKYLL.

I am a fireman to the city—helped to bring St. Michael's engine to Leworthy's house—I was there previous to that, about half past two—St. Michael's engine got there about three—I saw Parsons employed with the branch of another engine when he came up—that engine did not stand in front of the house, but Parsons was employing the branch-pipe in front of the house—after Parsons had been there some time, he let me have the branch-pipe while he was doing something to his engine, and I was playing into the dining room and attic, when I was alarmed by George, the report being that the fire had broke out in the back part of the house; and he took up my axe to break open the doors of the vault, in order to get out St. Michael's engine—we afterwards got the St. Michael's engine round into the stable-yard, at the back part of the premises—then I got a ladder and got upon a *skilling* roof—then I pulled out some tiles and got on the top of the stable, across the ridge of the house—when I had got there, I had a view of all the back parts of Leworthy's premises; I had no view of them before they were on fire—as soon as they handed me up the branch-pipe, I crawled along the *crease* of the stable with the pipe in my hand—it was a very dangerous situation to be in—soon after, and while I was in this situation, I perceived Mr. Leworthy—I took no notice of his dress.

Q. Finding him beside you upon this ridge, such as you describe it to be, what did he do?

A. I, being rather fatigued, holding the branch against Linnel's brewery and against the stabling, to

secure that from catching fire from the workshop, Mr. Leworthy insisted upon having the branch himself—I gave him the branch: *he employed it to secure other people's property*, Mr. Linnel's and the stabling—his own was too far gone: it appeared to me to be destroyed—the front house was entirely destroyed, and the back part was all on fire—there appeared no prospect of saving any part of his premises *—Plaintiff got down the tiles, where I would not venture myself at first, and pushed in a piece of Flemish work that run up above the shoot that parted the stabling and the shop—before he got down he knocked some pieces of pantile off the stabling—says I, for God's sake, keep off the pantile; for as soon as the roof of the shop goes in, the sparks will get into the hay-loft and set it on fire—he did whatever I directed him to do—I have known Leworthy 6 or 7 years—I never heard any thing of the man before this happened but as a hard-working man—I never heard any complaint against the man before this fire; and I have had jobs at the same place with him.

Q. What state did the man appear to be in, in respect to his mind?

A. I had as much as I could do to take care of myself, without looking after *his* mind—I was in very great danger, and so was Leworthy:—he went

---

* According to this account the Plaintiff had more regard to the property of his neighbour than his own; because, in point of fact, his own could not have been then in a hopeless state; for even ultimately (though not assisted as it might have been by the Plaintiff) it was but partially destroyed.

into a place more dangerous than witness would have gone into.

Cross-examined by Mr. Moore.

I had been on the roof, it might be 10 minutes before Leworthy came up.

Q. Had you been playing upon the workshop before he took the branch?

A. Yes, sir—and when he took the branch he directed it against the other property.

Mr. Serjeant Lens—That is my case my Lord.

DEFENCE.

Mr. Burrough.—May it please your Lordship—Gentlemen of the Jury—Though I am nominally in this case counsel only for the Defendants, yet, from what has passed to day, you must have collected that I am in fact counsel for a highly respectable society, called *the Globe Insurance Company*. The consequences of this action, supposing it to be decided against them, is of no earthly importance whatever, whether you give your verdict for one sum or another against this Company, if they are liable to pay, is of

no kind of importance; and if you shall be of opinion, after a fair investigation, that this Plaintiff ought to recover, they will pay the money with the utmost cheerfulness. They defend this cause, not merely upon their own accounts, but, from what has come to their knowledge, they feel it a duty which they owe to the public at large to step forward in this cause, and tell a jury of the county, that they consider the Plaintiff ought not to recover. But in the trial of this cause, I shall act for them (as they are) as a body of *Gentlemen.* I shall conduct myself therefore rather as closely investigating this question, than as standing up for the interests of ordinary clients; for all that is wanted on the part of these Gentlemen is, to be satisfied that in point of conscience they ought to pay; and the moment you think them liable, they will pay the money with the utmost cheerfulness; and they will lament that they have put the Plaintiff to the necessity of bringing his action to recover it; they will regret that they have resisted the demand upon grounds that shall eventually appear not to bear them out. But Gentlemen, though I make this observation, *I do most conscientiously assert,* from what I know of this cause, *that they have the strongest ground of defence to this action.*

In beginning the address, which I propose to make to you, I would beg to draw your attention to the course which my learned friend took in the outset of his case. You know perfectly well his general abilities, but you are not always aware of the address with which a Gentleman of his experience endeavours to conduct his cause. He was aiming to catch your attention upon one part of this case, that is, the

point of the dispensation with the clergyman's certificate; he was endeavouring to draw me and my learned friends who act with me into a scrape, to give up that as a matter which ought not to be insisted upon at all, and to engage me to do it upon grounds, which it will be impossible for him to sustain, when the whole of the case upon that particular question shall be disclosed. You heard what passed between us and the learned judge; that I stated it would ultimately appear there was the most gross fraud in this case, and that the point could not be discussed 'till the whole of the case had been gone through. I take it to be clear, and so clear, that it cannot be disputed, that, in point of law, there was here no dispensation, with the provision of the policy in question; and it is upon this ground I say so; *that the facts upon which the Directors of the Company ought to judge, whether a dispensation should take place or not, were never disclosed to them*; they never knew them; but the knowledge of these facts was wholly confined to the Plaintiff in the cause. You know, Gentlemen, the provision I allude to is that which prescribes, in the case of a fire happening, that notice shall be given with all convenient expedition, an account of the goods destroyed sent up to the Company's office, *and a certificate procured from the Minister and Churchwardens, and reputable inhabitants of the parish, within which the fire has taken place.* The certificate that was sent up to these Gentlemen bore the appearance of being signed by a clergyman, *J. Crosse, Clerk*, and three other persons, whose names appear on the face of it. Well might these Gentlemen think when this paper was

so sent up, that these persons answered to the description required by the provision in the policy; had they known that they did not answer to that description, something might have been argued in favour of this paper; *they did not know it;* but what did not the Plaintiff know? why did he not apply to the Minister and Churchwardens and Overseers of the poor of the parish of Saint Michael, within which parish the fire happened? I will tell you, Gentlemen, why he did not apply to them; I shall make it an important feature in another part of this cause; but I think it necessary to suggest it now, in order to satisfy you, that there is here no colour of a dispensation; because this paper so sent up, was in point of fact a gross imposition upon the Directors of this society. This man (Leworthy) knew that the Overseers of the poor of St. Michael's parish had in the course of the year 1807 (and the two years preceding) applied to him over and over again for poor's rates, and that he had represented his poverty to be such, that he could not pay them; and that they, in consequence of this, returned him *poor*; and the man never paid poor rates at all. Why then did he not apply to the Churchwardens and parish Overseers? Why, because if they knew (and he was no stranger to their knowledge of it,) that he had *not* goods at this time in his house to the value of £700, they would have told him, it is a gross imposition, we know the contrary. What you! you, who, in the course of this very year, have not paid the ordinary poor rates assessed upon you, and have represented yourself to be *poor*; do you now come and expect us to say, that, on the 7th of December

of this year you had in your house chattels and goods to the amount of £745? Now, Gentlemen, let me ask, does this state of facts call upon me to desert that point in this case? You will, I am confident, say I have ground enough to stand upon this point if I thought fit; *but I say again, as I said to his Lordship, that the Directors of this Company have put their honour into my hands, and I state to you, they will not insist upon this question, in regard to the dispensation, if the rest of the case is honest.* I maintain I have a right to your verdict, if I thought fit to demand it upon this plea, that the certificate was not dispensed with; *but I won't have it; I don't desire to have it; it never shall be said, that the members of this society, to whom this action is of no importance, sheltered themselves behind what my friend calls form and ceremony. I therefore tell you, Gentlemen, if, when the case is gone through, you can lay your hands upon your hearts, and say the Plaintiff ought to have his money, the want of a certificate shall not stand in his way.* I will admit the dispensation; but I give the Plaintiff this when he has no right to take it; it is a boon he cannot claim at my hands, but I resign it.

Gentlemen, let us now look at the general features of this case; here is a man in no great line of trade from the accounts of his own witnesses, for the mass of them speak of goods in the front shop only; all of whom speak of a fluctuating trade. Many of them had no reason to draw their attention to the subject, scarcely one; and very few indeed speak otherwise than in a loose and general way. I think it will ultimately make against the Plaintiff, that he had pro-

perty that would make up any description of trade—in my view of the subject, it will ultimately turn the case compleatly against the Plaintiff; for I have behind that sort of evidence, which will astonish you when I state it, assuming that you gave credit for the moment to the testimony of the Plaintiff's witnesses, that upon the premises in question there was at any time, in the course of the year 1807, a property of the value of £700, *there are behind facts in this cause which will put such evidence compleatly out of doors.*—One of you, Gentlemen, was so good as to put some questions to a witness that was called, the tendency of which was, to shew that nothing drew the attention of these witnesses that should lead them to ascertain precisely what was the value of the goods. *The whole of the evidence on this subject, in my judgment, appears to be as loose as any evidence that ever was given.* Another feature in this cause is, that the Plaintiff has represented himself by his witnesses to be a man of good character: I admit they have sworn in abundance that he *is* a man of good character—I have no objection to let him have the full effect of the testimony of those witnesses as far as it goes; and I shall not attempt to say they are not to be believed upon their testimony, and their knowledge of him as a man of good character. But if you have been used to courts of justice, you must know that nothing is so distrustful as evidence to character. Men admit notions of character frequently without any foundation at all, some from good nature, others without judging what they are about: they wish upon some occasions to give a man a character in order to get him out of a

situation of difficulty in which he may happen to be: *but let us try this man's character by the test of the evidence in this cause; and if I don't cut down this man's character so as to lay him flat upon the floor, then let him have the benefit of his character: but if I establish facts that are wholly inconsistent with all this evidence of character, all I can say, is, that he has deceived the world, and is not the man those witnesses conceived he was.* It is a thing that hourly and daily happens; one hardly knows what is meant by asking what sort of character a man is of. If you were to put the question with some particularity, as addressed to something specific, you would frequently receive a very different answer from what you get to these questions—of knowing the man for such a number of years—what is his general character, and so on; and *we have also met with some very extraordinary instances of men committing the most paltry crimes, who have yet borne in the eye of the world the most exemplary character.* I only wish you to look at this man's character now as *prima facie* proved: but look also at the statement which I am about to make to you; examine the evidence that I shall lay before you; and then say whether his character ought to bear at all upon this subject; for I agree, as we now stand, that the evidence which has been adduced to his character is evidence admissible.

Gentlemen—in order that you may know what this man's situation really was, I shall begin by endeavouring to describe to you from the evidence of witnesses who could not be deceived, the condition

of himself, his family and his house, during the whole of the year 1807. The fire happened on the 8th of December in that year. I shall not attempt to shew, for it is no part of this cause, that the man had not been in any better circumstances for some preceding years, he might; the question is not what he had in 1806, 1805 or 1804, that is not the question in the cause; *but what had he on the 8th of December* 1807? I shall place before you such circumstances, Gentlemen, as will put it out of all doubt that he could not have the property which he has represented himself to the Directors to have, which he has represented himself to have in the paper transmitted to their office. I will not tire you, Gentlemen, by going through the specific facts that I intend to prove in any length of detail; but I will endeavour to give you a short statement of them.—You will hear from a Gentleman whom I shall call, of the name of Bennett, that, as early as February in this same year 1807, the Plaintiff was indebted to him in £20, *this man of hundreds of pounds worth of goods in his shop*—for the evidence you have now is, that here was a continual succession of property—the witnesses you have already heard mean to insinuate that during the whole of this year some goods were taken away, and some received; that here was a constant property to the amount in question during the year 1807—Now, Gentlemen, in the month of February of that year he owed this Mr. Bennett £20:—Bennett threatened to sue him—Leworthy represented that he could not pay him—how then was the thing to be done? Why he employs Bennett to sell for him, for him Leworthy, his

furniture and mahogany goods, which produced £90, besides £50 worth which Leworthy himself bought in. *At that time, in order to pay £20, he was under the necessity in the month of February of thus dealing with his property.*—This is the man of substance!—Now we go on, Gentlemen: for the purpose of this sale there was a hand-bill issued to inform people when the sale should be; and in that hand-bill it is represented *that the goods are the property of a person leaving that line of business*; so that as early as February 1807, the Plaintiff represents (for this is published by his authority) that he is leaving that line of business; and his whole stock of goods was disposed of for the purpose of paying this £20 to Bennett. The goods, in fact, produced £90, besides £50 worth which he bought in; which proves most satisfactorily what was the full value of the Plaintiff's stock, even when his house was full of goods, and when he was in better circumstances than he was at the time of the fire. How then can it be believed, that in the December following this same house held, and this same Plaintiff possessed, goods to the amount of *seven hundred and forty-five pounds?*

Now, Gentlemen, in April it will appear too that he was in a situation so poor, that he could not keep a stock of goods by him of the value of £80, for then he employed a Mr. Bartrum, who sold the greater proportion of these goods; and you will find, from the evidence of Mr. Bennett and Mr. Bartrum, that at each of these times the property of the Plaintiff was wholly different from what his witnesses have represented it to be. In September you will find a

considerable quantity of goods received from this man's house for sale again by a Mr. Evill, which produced a sum of £50—Now the representation to day is, that he was carrying on the trade of an upholsterer and cabinet maker, dealing in the course of his trade—*Whereas you will find that all his dealings were with auctioneers,* which is the strongest symptom of decline in the man who so acts; for if he had gone on in the regular course of trade, is it possible that he should be from time to time dealing out his property into the hands of auctioneers in order to raise money; that he should have recourse to means which are certainly not so advantageous to the party, instead of depending upon a trade which is represented to have been very sufficient at that time? *In October,* Gentlemen, which is very near the fire, a person of the name of Willis had a bill of this man's for £10, and called upon him to pay it—In October he could not pay that bill, and what does he do? *He offers to Willis his whole stock of feathers which he had then in his house, to satisfy this debt of £10; and Mr. Willis took his whole stock of feathers, which was then about a hundred weight;* and, that not amounting to a sum sufficient for the payment of the bill, he was obliged to take some other article of goods to make up the rest of his small demand. I shall prove by a servant who lived in his house, that *before the 10th of November he had actually disposed of all his feathers again; and that from the 10th of November he had actually no feathers whatever in his house.*

Now, Gentlemen, the persons whom I have mentioned in the course of their dealings, had occasion

to go to the Plaintiff's house, their attention was then drawn to the property of this man; and they will tell you, and tell you firmly upon their oaths, *that he had not at any of these times any thing like the property for the loss of which he claims*; *they* will state to you the stock which he had in every room of the house; *they will state to you the miserable situation of his wife and family, that they had not even beds to lie upon—I shall prove that he had a maid servant till within about a month of the fire, but had no bed for her to lie upon, and that he paid a shilling a week for a bed for her out of the house*—Notice here again the repeated applications that are made to him for poor rates; he pleads *his own poverty, and is set down poor:* is that consistent with the situation of this man, as it has been described? His non-payments are over-looked by the parish officers because he is poor; they exercise their judgment upon the subject, and from the state of this man's house, and his family, they give credit to his representations, and act upon them; *can there be a stronger feature of poverty in an individual, than that when he is legally applied to to pay these rates, he states himself to be poor, and, upon that account, is forgiven his rates?* I shall prove this by the Overseer himself, and by the books of the parish—In the course of the same year, Gentlemen, you will find this wealthy tradesman, who is represented as dealing in all sorts of goods, and having a current property to this amount, *was constantly in the habit of borrowing the small sum of a guinea, and a guinea and half, from a gentleman of the name of Linnel, whom I sha*

call before you, and who at last refused to lend him any more; and what do you think was the reason of his refusal? because he could never get his money back again, but by taking it out in goods. This is the man who is represented to have on the 8th of December £745 worth of goods! *You will find, Gentlemen, that within 2 or 3 weeks of the fire, this man, being a carpenter and cabinet-maker, and having particular occasion every moment of his trade for the article of glue*; the instant I mention it, you know how essentially necessary an article it is in those trades—*sends to a Mr. Nonmus, for sale by auction* also, with other goods, *70lb weight of glue, and the glue is absolutely sold!* Gentlemen, I put this question to you, is it possible to conceive, that any man, who has the sort of trade that has been spoken to by the witnesses for the Plaintiff, should have disposed of a commodity of this sort, without which it was hardly possible for him to carry on trade for a moment?

Gentlemen, I will name to you another witness whom I shall call, and whom I think a most potent witness, and a witness whom my friend cannot object to, and dare not contradict—who do you think it is? *I will call the Plaintiff himself upon his oath*—I will shew you what this man has stated upon his own oath, his own solemn oath, *at a very short period indeed, but 3 or 4 days before the fire in question; and, if after hearing this fact, you can believe for a moment that he had the property he pretends to have had, you must have more credulity about you than belongs to the ordinary classes of men.*—I am sure you cannot—but now you shall hear this witness, and you shall

know what it is he says—Upon the 8th of November he had notice served upon him of his being drawn for the militia; we all know there is a provision in the militia acts for exempting persons with so many children, who are not possessed of £100 worth of goods—What did the Plaintiff? He was called before the Deputy Lieutenant and Magistrates on the 4th of December, 3 days before the fire, for the purpose of this militia business, and this is the oath which he took:—"*I, William Leworthy, do swear "that I am not seized or possessed, either in my own "right, or in right of my wife, of any estate in land, "goods, or money of the clear value of one hundred "pounds—So help me God! (Signed) Wm. Le-"worthy.*"—My friend shakes his head at this; he seems to fancy that he has an answer to it; we shall hear by and by what his answer is—The act says, that every man who can swear he is not possessed of £100 worth of goods, is under certain circumstances exempt from the militia. *I say that possession is not to be taken upon the balance of all his accounts; but the question is, what has he in apparent possession?* that is the meaning of the legislature. The oath goes to this: he swears that he has not *in his possession* goods or chattels to the amount of £100—*Upon the 4th of December he solemnly swears this; and now* by the certificate that was sent up, and by the evidence which has been offered to day, *you are told that this man had, only 3 days after taking that oath,* £745 *worth of goods!* If my friend can give a fair answer to this, it is well; but I trust you will watch him, when he endeavours to satisfy you that this oath

may be crept out of upon any terms whatever—you shall have it read to you; you must see the sense in which it is understood by the law of the land. *He swears that he is not worth one hundred pounds; what does this come to? does it not amount to this, that here was poverty and wretchedness in the extreme?* Is it possible to conceive that this man had £745 worth of goods at this time, and at the Midsummer preceding, a balance of £600 in debts owing to him? I heap by this means coals of fire upon his head; at Midsummer 1807, he had, for I will take it to be so, a balance owing to him upon the statement of his accounts of £600; *he had property, as he represents by his fraudulent certificate, that was sent up to the office to the amount of £745*; and yet he cannot pay his poor rates for that very year; and in December, within 3 or 4 days of the *fire*, he has the impudence to swear that he is not possessed of a hundred pounds worth of goods—I say *impudence*, because he is in this dilemma—*if the evidence he has produced this day is true, then it follows he committed perjury, in what he swore respecting the militia—if the evidence is false, then it equally follows that he has been guilty of perjury in the oath sent up to the office as the ground of his claim.*—Is it possible you can hear this part of the case without feeling assured that all was poverty and wretchedness at the time when the fire happened? *Thus much as to the general subject of the circumstances of this man;* and, I submit to you, that there cannot be evidence more important than that which I have stated.—You see the sort of case I mean to submit to you, namely, that during the whole year 1807, he was in a state of progressive poverty; he

was conducting his business, not as a man in credit, who was likely to keep his standing in society, but you find him in all his transactions a distressed man, scarcely able to meet the claims of importunate creditors, though to a small amount; borrowing small sums which he could not repay—unable to pay his taxes—his family in a state of the utmost indigence and wretchedness—the Plaintiff taking the oath already stated to you, and at last arriving at a crisis of poverty, which, when you hear, you will feel was little, if at all short of actual beggary.

Then, Gentlemen, we come down to the time of the fire, accompanied by the circumstance of this certificate, and this affidavit made on the subject of the militia.—Now in what way shall I introduce this fire? It appears to me that it is fair enough to take this view of it:—here is a man, as I represent to you, in very unfortunate circumstances, in a state of great poverty; nay, stating himself by this affidavit to be a man of no property—he has his house burnt on the 8th of December, 1807—but I must not forget one circumstance, which is most material upon this part of the case, and that is, *that so late as the evening of the 7th of December he tried to borrow, I would almost say beg, of a woman, whom I shall call as a witness, a single shilling*; in which borrowing there might in itself be nothing: I might borrow a shilling or a penny from any of my learned friends, around this table to answer some ordinary purpose; but that is not the case here: *he represented his poverty to be such that he was in absolute want of it*; and you will find this to be a most important feature in the cause; and if you believe the witness that I

shall call before you, it puts this man in a state of peril, such as he will find it very difficult indeed to escape from.—Gentlemen, before I state to you the circumstances of the fire, I must point out to your attention something which is very important in my case;—you know perfectly well, that where men are getting or have gotten into a state of guilt, they frequently overshoot the mark: their minds are anxiously revolving the thing that is to take place, or that has taken place; they get into contradictions which detect them—*you will judge whether this man has not done that which detects him, and which legally justifies the Globe Insurance Company for their resistance to this demand.* It is admitted by the pleadings in the cause, that this man had a policy; it is admitted that he had paid his insurance, so as to entitle him to the amount of any loss which he might fairly sustain:—but my friend will be astonished to hear what this man himself has stated with respect to his insurance—*it is impossible you should say that his own declarations, which I shall prove, are consistent with innocence*—it is impossible that you should put any other construction upon them, than that guilt (at the time these things were done) was revolving in his mind; *that he was either designing to do the things which he has done; or that he was then in that wretched state into which men are plunged by their crimes when things which they have meditated are accomplished.*

Gentlemen, you will remember the policy was effected on the 25th of November 1805, when this person (who was living in Bath, there being an agent for the Globe Insurance Company living in Bath

also) thought fit to go to Holt Spa, 9 miles from Bath, for the purpose of effecting this insurance; a most singular circumstance that he should not have insured his house at some place in Bath; why does he go to the distance of 9 miles to effect it? however, there it was effected, and the policy is such as to entitle him to recover, if I had no defence. I shall shew to you that at this time the Globe Company had a regular agent living in the city of Bath; and I will now state to you, and I must do it with some particularity, what the Plaintiff himself represented, touching the business of his insurance. You shall hear the three or four different accounts he gave of the situation in which he stood with respect to this insurance; you will see how strangely contradictory they are to one another, how contrary to all common honesty and probability. About a fortnight before the fire, the Plaintiff went to a person whom I have already had occasion to mention, a Mr. Nonmus; at the moment of his calling upon him, Mr. Nonmus was nailing up his insurance mark upon a beam within his shop, the plate or sign of the office in which he was insured, bearing the number of his policy, and so on. On the Plaintiff's coming into the shop, and observing what was done, some questions were put by him to Mr. Nonmus, as to what this plate should be, when the Plaintiff said (strange it is, but it will be proved to you, and cannot be contradicted,) *that "he had thought a great many times to insure, but "had forgot it; now (says he) as sure as I live, I will "insure before I go home;"* and then he asked Nonmus, as if in an ignorant manner, *how he managed to insure, or how he got it done?* This, Gentlemen,

was only three weeks before the fire took place! In the course of the same conversation, *he asked Nonmus, whether if he insured for £500, or any other given sum, the office would, in case of a fire, pay him that amount?* Nonmus told him, certainly not; but merely the amount of his actual loss, whether it were £500, or only 5*s*; *upon which the Plaintiff remarked, he always thought they paid the whole sum insured.* This will be proved to you; and then, I ask, is this consistent at all with the fair situation in which this man stood, having been insured, as he well knew, as early as the year 1805? And does it not satisfy you, that his mind was at work, plotting and contriving the work he afterwards accomplished?

But the case will not stop here—I will state the evidence of another witness, which you will think extremely important. I shall call to you a Gentleman of great respectability of the name of Wiltshire, who is known to all of you; and in the statement of Mr. Wiltshire Mr. Linnel will join: you will find that Mr. Wiltshire believing, when this affair happened, that the Plaintiff was really an unfortunate man, reduced to distress by an accidental fire, had endeavoured to raise a subscription for him; but all this fell to the ground when Mr. Wiltshire had heard a little more upon this subject. Now you shall hear what this man said. I shall have occasion to introduce Mr. Wiltshire to you by and by for another cause—at present I shall only introduce him in order that you may know what was said to him by the Plaintiff touching the insurance.

Mr. Wiltshire asked him if his property was insured? he replied "not for one shilling!" How can

you account for this? The fact will be proved to you. How are these contradictions to be explained? It appears to me quite impossible to put them to any other account than that I before stated to you. Mr. Wiltshire's recollection of this will be confirmed to you by Mr. Linnel, in whose presence the conversation passed. Upon another occasion after the fire, the Plaintiff said to one John Winter, a watchman, who will be called to you, *that he was insured in London for £400*: this was the very morning after the fire had taken place. And, lastly, upon this same day (singular it is) he stated to a gentleman of the name of Saxty, *that he had once insured, but that year he had omitted paying his insurance*; and why had he omitted paying his insurance? *because*, he said, *I could not spare the money!*—In the week following this conversation, and following the fire, he went to the same Mr. Saxty, and told him *that he had found the receipt for his insurance in his wife's pocket-book*.—Now, Gentlemen, what say you to all this, to these different representations in respect to his insurance? *He was insured; he had a legal policy*. How could it happen, that a man of honesty, a man who had not some wicked project revolving in his mind, should get into a situation that should occasion him to fall into these various contradictions and falsehoods?

But let us go on to the fire itself: I have now before me an exact representation [a model] of Leworthy's house, of the space between his house and his workshop; and *of* the workshop you shall hear from the witnesses who will be called, what the appearances of the fire were when it first broke out;

you will find from the evidence of the watchman that he alarmed the house—you must remember that at this time there was no one in the house but the Plaintiff Leworthy himself. Here I understand is the street, [the learned counsel went over the model explaining its different parts;] the watchman alarmed the house, and called aloud for any one that was within to come out, lest they should be burnt. *In a very short time the Plaintiff appeared* at one of the dining-room windows, and threw up the sash, *having all his cloaths on except his coat;* that will be proved to you. It will be proved to you, I think in a way that you cannot fail to believe; *that in the Plaintiff there was no appearance of hurry or surprize, or alarm, at such an accident as this was*; the watchman said "escape, or you will be burnt"—and the answer was, "I CANNOT GO WITHOUT MY COAT"—*he coolly shut down the window and went back into the room;* and from the testimony of this watchman, it will appear to you that he went and opened the door of another room, upon which the fire burst from that room into the room in which the Plaintiff then was; he was at last obliged to retire of course, and the watchman procured him the means of getting down —*no appearance of hurry at all, no appearance of alarm*; nay, Gentlemen, you will hear that this man, had at the moment, the impudence—this man who had been borrowing a guinea all the year, who had been borrowing a single shilling on the night before, had I say the impudence to represent to the watchman, *that he had left £80 upon the mantle-piece of this dining room;* if he had so done, £80 was much better worth getting than his coat; and it could have

been got with the same ease, for there was no fire in this room when he retired from the window; the fire never came into the room till he had opened a back door and let it in—another thing is, that at the moment when the fire appeared in the front shop below, there was fire in the kitchen immediately under the shop and in the front attic, but none in this dining room, which was between them; *now I defy any man to shew how the fire got into the attic, without its being set on fire by somebody; who set it on fire I don't say now; you can conjecture, and you will probably say upon your oaths.* There is no connection that we can discover, if you put out of consideration the dining-room, between the shop below and the attic; but, by whatever means the fire got into this shop and back parlour, by the same means no doubt it must have got into the attics; *for at the moment the fire was discovered in the front shop, a separate independent fire was observed in these attics, between which and the shop there was no possibility of communication*—and Gentlemen, this is not the only condemning fact which the premises themselves furnish —*the workshop was also on fire at the same moment; this was on the other side of the yard at the back of the house*—they have endeavoured to shew by one of their witnesses that the wind carried the fire into this part—but, Gentlemen, it is not true that the wind carried the fire there, there was but very little wind that night; and I believe, *it will be proved to you, that whatever wind there was carried the fire in the opposite direction.*

Gentlemen, I shall shew you by persons who cannot be mistaken, that there were no possible means

by which the flames could get from this house, and communicate with the workshop behind; I will tell you why; here were lying in this very yard, between the house and this workshop, *a quantity of shavings, which were afterward found unburnt*; there could have been no communication then to the lower part of this shop; and it must therefore appear that fire must have originated some where in this workshop: *you will further find that the beams were burnt on the inside toward the workshop, and not at all on the outside toward the house*—Many other circumstances arising out of the appearance of the premises will be proved to you, *and will shew to a demonstration, that the fire in the dwelling house and that in the workshop originated and existed totally independent of each other*—The circumstances to which I allude, I need not detail, they will be stated to you by various persons who saw this shocking scene at the time it happened; they will be stated by the watchman, who saw the fire, and who will describe upon his oath what he saw, and by other people who saw the transaction. *Here I would ask you, if all this is proved to your satisfaction, will you think that the Globe Insurance Company has done wrong in resisting this claim? if all this shall appear to you, or something much short of this, will you not think that they have ground enough for insisting, that in the account which was transmitted to them, there was fraud and misrepresentation?* If you believe what I before stated to you of the general circumstances of this man; the circumstance of his frequently borrowing a guinea during the year; of his endeavouring to borrow a shilling the night before the fire; of his having re-

presented that he had left £80 upon the mantle-piece; *you cannot fail to believe that there was fraud in the account which he sent up to the Company.* You shall hear again from his own confession, whether what I state to you is not the true representation of this case; *I mean to charge the Plaintiff, and I charge him now with having set fire to his house;* and I will state another circumstance from which you will be led to infer, that he was the man who set this house on fire. Gentlemen, you will find that *at one time the Plaintiff represented that he had raked out all the fire that was in the grate previous to his leaving his house; and at another time that he had no fire in the house for several days, in consequence of the absence of his wife.* When I present these circumstances to you, what is the necessary result? You find him representing to one person that he had had no fire in his house for some time; and you find him representing to another, that he had fire in his grate that very evening, and that he had raked it out before he left his house—But that is not all; *the Plaintiff supped on this night at a public house—this man bought a single candle at the public house;* and with respect to this candle, you will find that *he represented to some people that he did not light it at all;* and that *to others he represented that he did light it;* and, I might ask how comes this opulent tradesman to be in the situation of wanting to buy a single candle at a public house? that, however, is not my point. *After the fire a piece of candle was found;* I am not sure that I shall be able to identify it to your satisfaction, for I believe the piece is lost; *but*

Mr. Saxty, the landlord of this house, will tell you that he found a piece of candle lying under the saw-dust, which he judged, from having seen the remainder of the pound of candles at the public house, to have been part of the candle which the Plaintiff bought; and when that piece of candle was taken up, it exhibited every mark of having been hastily carried about from place to place, by the melting on the sides, and by its smoaked appearance. Is not this ground enough for the Globe Insurance Company to stand upon, and say, we will not pay this Plaintiff?—I will state to you another fact; you heard just now from the Plaintiff's witnesses, that during the fire this man got the branch-pipe of the engine, and assisted very much in the use of it; and if he could derive an advantage from that circumstance in the general result of the case, so much the better. But I will tell you what he did, *he got the branch-pipe, and it will be proved to you that he was playing it on a dead wall, where it could be of no possible use; whilst in the act of doing this, he was spoken to by two persons, who told him it could be of no use to direct the water there; he ceased to do it, and where do you think he turned* the pipe? *why upon both these persons, whom I shall call as witnesses; and one, in particular, who was at that moment on the wall, was obliged to get off the wall in haste, or he would have been driven off by the force of the stream from the pipe;* why was this done? why *it was done to prevent the penetrating eye of the people on the wall and elsewhere;* conscience told him that something was going forward, of which he was the author, and he said within himself, you shan't stand there in a situation to observe accurately what

is going forward, and I will drive you away by means of that instrument which was brought here for the purpose of saving this property—Gentlemen, when these things are proved to you, I don't know upon what ground you can doubt of the Plaintiff's guilt—*Gentlemen, I would ask where stands character? what has character to do with conduct like this?*—if this man (I would almost say) had called all the angels of heaven, to speak to his character, would you pay the least regard to their testimony, after what I have stated shall have been proved?

Another fact, Gentlemen, deserves your serious consideration—the Plaintiff was called upon to account how this fire happened, his answer was "*I "cannot tell, unless it happened by the cat having "something tied to her tail, which was set on fire "when she came down the chimney, and went among "the shavings.*" This is his own representation; *and he represented too that the cat had been seen burnt,* that is, singed upon her back. *Let him prove that if he can; I will give him leave to call a witness now to prove that fact, to prove that his cat was seen burnt.* Is this such an account as a man being in the house at the very time was likely to give, if his intention were to give an honest account of what he knew had passed? Let us pause here for a moment—Do you believe this representation to be true? Do you believe that the cat set fire to the house? I will not insult you by supposing you do, I know you do not—then see the necessary consequence of your discrediting it—no honest man ever racked his brains to invent and conjure up a false account, or a grossly

improbable conjecture—if he took no guilty part in the transaction, he was not interested in making the representation—an honest man would have said (if the fact was so) that he had no means of accounting for the fire.—But this would not do for a man who had taken a guilty part in the transaction :—a consciousness of his guilt would make him anxious to leave nothing unaccounted for; lest what his conscience suggested should be suspected by others; and I feel bound to say, that, as the account given by the Plaintiff could not be true, the only rational way of accounting for his inventing it, is, by assuming that it was the natural effusion of a guilty mind.

But, Gentlemen, the Plaintiff not only told this false and improbable story—he was not even consistent—he gave various and different accounts respecting his cat :—to one he told the story that I have just related to you—to another, instead of saying that the cat had been seen burnt, he added, *that the cat was missing : that was false, for the cat was not missing ;*—to Mr. Wiltshire (the Gentleman who was making a collection for him) he said, *that he had a cat which was accustomed to lie under the grate to warm herself, and he thought she might have got there during his absence, and some fire had got upon her back, which she might have carried among the shavings, and so set fire to the house ;* and that the cat had been seen with her back singed: *was this consistent with his statement to some of the witnesses, that there had been no fire in the house for several days?* Supposing this man were now trying at the bar of the other court for the crime of setting fire to his house, might I not confidently ask for a verdict of guilty, upon

proving the conduct of this man, contrasted with his previous poverty, and his going in the manner described with a candle from the public house to his own house; conducting himself in his house at the time of the fire in the way I have repeated; his stating that he had left £80 upon the mantle-piece; his giving all these contradictory accounts respecting the insurance; his giving these contradictory accounts relating to the fire and the cat—might I not very well say, that all this conduct tended to prove, and satisfactorily proved the main issue? *The house took fire—was it set on fire, or did it take fire by accident? if one of these accounts be true, it could not happen by accident; for then there was no fire in the house by means of which it could originate; the fire is discovered in various parts of the house and premises at the same time, which by no possibility could have happened by accident, for there was not only no communication, but there had not been time to allow of its spreading to such a degree.* I ask you, whether, if you had this case now before the learned judge in the other court, and this man stood there to answer for his life, whether what I have stated to you would not be demonstration of the fact; *he* has given you no account of the fire; he has given you no account by any witness called to day, by any thing upon which any conjecture can be raised, that the fire happened through any other means. I maintain there is not one of you, who, considering this case in the way I put it, there is not one of you, but would say, in answer to the question put by the officer of the other court, *guilty*. Who was the man that set fire to the house?

does the Plaintiff say it happened by accident? I answer it is impossible, for you have said there was no fire in your house for several days before. Who told the story of his having left £80 upon the mantle-piece, when he could have got it back as easily as he got his coat? *Who makes evidence against himself by appearing at the window the moment the alarm was given; then shutting it down and retiring to let the fire into that room out of another—I say who did it?* How can it be accounted for by any other means than that it happened through the designed and effected purpose of this man?—is it possible to believe that the evidence which has been offered to you by those who saw him playing the engine, will have the least weight if my fact is proved; that at the very moment when it was the duty of the persons whom I shall call, to take care of the property of Mr. Linnell, this man, who was assisting to play the engine, who was, as he would have you believe, endeavouring to stop the fire; who is represented to have been distressed and crying, and in perfect despair in consequence of this event; did, in fact, all in his power to drive them off the wall, the people whose duty called them there, and who, if they had not quickly got down from the wall, would have been swept off from it?—but they were obliged to quit the spot. *Is it possible to set against this the slight evidence you have had of his crying and lamenting, which all comes to nothing, for we have heard of crocodiles crying when their purpose is to deceive and to destroy.*

Upon these numerous facts I am sure, Gentlemen, you would have no doubt that the Plaintiff did commit this offence; *but you shall have another fact, a*

fact which strikes me as most important: John Winter, the watchman, the man who first alarmed the house, the man who saw him at the window, the man who heard him say that he had left £80 upon the mantle-piece, *will tell you that, at a period subsequent to this, a short time after the fire, the Plaintiff went to Winter, who was* then working at a Mr. Stothert's; the Plaintiff called there and expressed a desire to see Winter; Winter was sent for, and at the Plaintiff's request he went out with him; as they were going toward a Mr. Smith's, in New King Street, *the Plaintiff said to him, I want you to testify one thing* —hear, Gentlemen, what that one thing was—*Winter said, what is that? the Plaintiff made answer, "I "want you to testify that I was burnt out of my "house naked, and then I shall get £700."* Gentlemen, what say you to this fact? if it be true, ought the Globe Insurance Company to have paid this Plaintiff, upon its coming to their knowledge—*I want you to testify one thing, to say that I was burnt out of my house naked; what then becomes of the stockings about the heels of this man,* and his running down the street; is that part of the same contrivance and deceit? if you believe he said this to Winter, and I believe Winter will be credited when you hear his evidence; *I say it is impossible to reconcile with that evidence, this story of his stockings being about his heels, and his running down the street with his shirt open, unless you consider that as done, if it was done at all, with a view to hide the reality*—I want you to testify one thing, that I was burnt out of my house naked, and then I shall get £700! *Consci-*

ence told him at that time, that his being burnt out of the house naked, and coming out in a hurry, would form a very important feature in the case, when he went to make his claim upon his policy of insurance —*Did he say this or did he not? if he did, then couple it with but half the evidence that I have before stated to you, and the case of the Defendants is completely in your hands, and I am entitled to your verdict*—but I should have told you, that *Winter positively and expressly refused* to testify as Leworthy desired him to do; nay, more than that, Winter told him on this occasion how he was dressed at the time of the fire; *and he told him that he had got the same cloathes on at the very moment they were conversing;* speaking particularly to the coat, the Plaintiff did not like Winter's honesty, and gave him sixpence for his trouble, instead of taking him to Mr. Smith's to give an account of his dress—after this he saw Winter again, and asked him, if he would swear to what he first spoke to him about; to which Winter replied, no; the Plaintiff said I shall want you to go to London, for I cannot get my money—and so on.

This, Gentlemen, is the case on the part of the Globe Insurance Company; and I am sure, when you have the whole of the evidence, *you will be perfectly satisfied that the Globe Insurance Company would not have done their duty to the public at large, if they had paid this man without the case being laid before a jury of the country. It was their duty to investigate a case wherein there are so many suspicious, and so many certain and indisputable facts, for many of these facts cannot be contradicted*—I know it cannot

be contradicted that he took this oath before the deputy Lieutenant; I know it cannot be contradicted that he was in the continual habit of borrowing small sums of a gentleman; disposing of his property by piece meal; it cannot be contradicted that he made an attempt to borrow a shilling from necessity on the night of the fire; it cannot be contradicted that he bought a candle at the ale-house; it cannot be contradicted that he was the only person in the house that night; nor can the general features of the case, with respect to the appearance of the fire in different parts of the buildings, be contradicted by any possible evidence—My friend has finished his case: *My case* is now to be laid before you; and the only question will be whether you believe the evidence when it is so laid before you; *but if you believe a fourth of this evidence, I am entitled to your verdict on this ground; that, supposing it does not go the length of satisfying you that this man set his house on fire, though I maintain it does go that length, yet upon the other pleas of fraud, misrepresentation and false swearing, all this evidence turns back upon them, and shews to you, that the account sent up was not a fair and true one.*

Gentlemen, I conclude by saying again—*If it shall turn out that by any observations of my learned friend, and if by any statement from his Lordship, these facts can be got rid of so as not to make out our case upon the broad merits, then I do that which I think it my duty to do, (the honour of the Globe Insurance Company being committed to my hands)—the Company shall, notwithstanding the circumstances attending it, consent by me to waive the point of the dispensation, and you shall give your verdict for the whole sum de-*

manded. These Gentlemen form a Company rich beyond example, even in this country, and in the course which they are pursuing most useful; *the object of money is nothing; it shall not be made a matter of calculation whether it ought to be more or less; if my case is defeated give your verdict for the sum of £745;* Gentlemen, I won't give you any further trouble; I have endeavoured to state to you as concisely as I could what the features of the Defendant's case are; and I beg leave to say, with unfeigned confidence, that if the case is made out in the way I have stated it, I SHALL BE ENTITLED TO YOUR VERDICT.

EVIDENCE

FOR THE

DEFENDANT.

MR. SAMUEL BENNETT *Sworn. Examined by* MR. GASELEE.

WITNESS. I am an upholsterer and auctioneer at Bath—I know Leworthy—I have been in the habit of selling goods for him—In the month of February 1807, *he owed me somewhere about £33 for an auction account—I repeatedly applied to him for the payment of it*—he requested me, as he had it not in his power to pay me, to sell his goods; out of which I was to pay myself, and return him the overplus—*he told me at that time that he was very poor; and that he should sell his furniture for the purpose of paying his debts:* I accordingly attended and sold it. The whole of it consisted of new furniture, principally cabinet-goods. This is the hand-bill that was published for the sale of it.

Q. I observe it is said "*being the property of a* "*person leaving that line of business*;" how came you to state that in the hand-bill?

A. I understood that was his intention: he told me so to state.

Witness. This is the catalogue of the goods; they were contained in 6 rooms of his house. I sold the goods from the kitchen, the shop, the parlour, the back and front dining-rooms, and the passage (I don't call that a room), and a few articles in the back-kitchen.—I sold the principal part of those goods, and the remaining articles he bought in himself:—the property I absolutely sold was somewhere about £85; and the property Leworthy bought in was about £30—Witness does not know what afterwards became of the £30 worth.

The Associate read the hand-bill, which stated that all Leworthy's stock was to be sold upon the premises without reserve, "*being the property of a person* "*leaving that line of business.*"

Cross-examined by Mr. Serjeant Lens.

Witness—has been an auctioneer many years.

Q. Is that flourish about retiring from business an uncommon thing to be published, though, in point of fact, the party intends to continue his business?

A. It is sometimes the case. But I understood when Leworthy called upon me, he absolutely meant what he said—*he particularly directed me to put in those words.*

Q. You said before, that he intimated to you that he was going to leave that line of business, and therefore it was so published?

A. Yes, sir, he said so.

Q. Now, did you or himself desire it?

A. He did.

Q. Does your memory serve you to inform me, whether the goods which Leworthy bought in were the best or the worst, or whether the one was much the same with the other?

A. They were the best manufactured goods, those that would not fetch the price that he expected.

MR. BENJAMIN BARTRUM *Sworn. Examined by* MR. MOORE.

WITNESS. I am an auctioneer in Bath, in partnership with Mr. William Bally—I know Leworthy—Goods of Leworthy's were deposited with us by Leworthy on or about the 25th of April 1807, for the purpose of selling by auction—a great part of them were chests of drawers—there were a few common sofas—I think there were 12 in all of the chests of drawers—the drawers were of mahogany—the remainder were mostly bedsteads, with, I think, a few second-hand articles.—*The same day the goods were sent in, we advanced £40 on them, in part of what they might fetch afterwards*—they could not at the time be disposed of; but, having the security of the goods, we thought we could venture to advance £40 on them—*the Plaintiff said he was in great necessity for money, and that he must have £40 advanced upon this property*; which we accordingly did when the property was put into our hands—the goods were not disposed of at that immediate time:—on the day fixed for the sale there happened to be several other sales; and, there not being a sufficient attendance of company, the sale was put off:—he expressed himself much distressed and disappointed in consequence, and prevailed upon us to purchase from him some

chests of drawers, which came to about £36, in order to put him in possession of some money—this we did; and his goods were afterwards sold to the amount of from 70 to £80, but which amount included the chests of drawers which we had bought of him and paid him for—those drawers were part of the goods which he had first sent us for sale;—the drawers, with the other goods, were sold at various sales, from the 20th of April to the 4th of September 1807, and amounted in the whole to about £80; I cannot say to the exact amount without referring to my book.—*About the middle of August in this year*, about the 20th as far as I recollect, we were, in the course of our upholstery business, in want of some sycamore wood, which at that time was difficult to be procured; at least we didn't know from what source to obtain it. I was informed that some was to be had of Leworthy—*I went to Leworthy's* for it; he was not at home: I past through the shop into the yard, and went into the shed under the workshop—I didn't take that very particular notice that some persons may have taken: but *the shop appeared to me to be altogether in a most miserable condition; and that there were but very few things of value in it.* I did not go into the workshop—the shed under it, I imagine, was where he kept his timber, as under most cabinet-makers' shops—*I saw very little in it, very little in it indeed; I was surprized to see so little, and a place so destitute of those things which are necessary for carrying on the cabinet business—Plaintiff had no sycamore wood.*

Cross-examined by Mr. Jekyll.

Witness. It does sometimes happen that tradesmen send goods to be sold, and require temporary advances of money, but seldom to us—*I don't know of more than 2 or 3 instances of it since I have been in business*—I have been in business near 5 years—in the course of that time, as far as my recollection goes, I believe we have had 2 or 3 transactions of that sort; but I cannot at this time recollect what those were—those transactions, I believe, were not with persons in credit at Bath; *I always consider persons who come in that sort of way as necessitous persons.*

Q. Why, sir; is it not very usual, and the constant course for persons carrying on a respectable line of business, in the cabinet way suppose, to send goods to your auction-room at Bath to be sold—have you not frequently had goods in this way from very respectable traders?

A. *I have never known it from very respectable traders, and money advanced.*

Q. Not any very great length of time ago you sold goods for a very respectable trader, a Mrs. ——?

A. We have, on particular occasions, when she has thought her goods would sell well:—in 3 or 4 instances we have disposed of goods for her; *but never advanced money upon such goods—never dreamt of such a thing.*

Witness. Where we advance money upon goods we have the greater interest to sell them—it was about the latter end of August we wanted the sycamore wood—sycamore wood is sometimes used in cabinet making—it is not a beautiful nor a scarce

wood; it is a common English wood—I applied to Leworthy, understanding he had some—*when I went into the shed I was astonished to see so miserable a place*—I did not see Leworthy then.

Re-examined by Mr. Moore.

Witness. *It was the dirtiness and the dearth of things about the place that created my surprize—it was by no means like the shop of a prosperous tradesman.*

Mr. George Willis *Sworn. Examined by* Mr. Gaselee.

Witness. I am an upholsterer and auctioneer at Bath—I was in the habit of employing Leworthy for the period of 6 months before the fire—6 weeks or 2 months before the fire I had a bill of Leworthy's in my hands for £10 dishonoured—I received from Leworthy a lot of feathers that he had in his possession, and a bedstead, which made up the amount of £10, as he represented that he had not money to pay it—it was Mrs. Leworthy made the representation—this was at Leworthy's house—I did not see *him*—I did not see him till I received the bedstead; I received the feathers first and the bedstead afterward—the bedstead was directed by Mr. Leworthy to be brought to my house—all that past between Leworthy and me, was, that in case I would take the bedstead in part of payment, to make up the amount, he would feel himself obliged—it was to make up the amount of the bill that was returned from Barron—I had before received a quantity of feathers—the value of them I think was about £7. 10*s*—that was,

not sufficient to make up my demand—after I had received the feathers, Leworthy requested me to take a bedstead to make up the amount of his demand—the value of the bedstead was somewhere about £2 10*s*—I received the two to make up my demand, at the time Leworthy requested me to take the bedstead; I cannot call to mind any thing else particular that passed—this passed at my house—*with respect to the feathers nothing more was said then, than that they were all the feathers he had;* when Leworthy came to my house, the only thing he said to me relating to the bill, was, that he would wish the value to be taken in goods.

Q. Did he mention to you the amount of the bill?

A. Certainly.

Witness—I was several times after this at the house of Leworthy—*I was there the day previous to the fire*—I went through the shop and into the back shop, under the shed and up stairs.—I made observations upon the goods that were in those respective places—as I passed through the front shop I observed 2 or 3 carcases of press bedsteads, and also a wardrobe; probably there might be a thing or two more, which is all that I noticed in passing through the premises—*the shop was nothing like full, the greatest scantiness appeared*—in the back room, to the best of my knowledge, indeed I can swear it, there were 3 chairs, and a table, and a bench; to my knowledge there was nothing else—in the workshop there were 3 cribs making for me; they were the only things, except a bedstead, that I saw there—*in the course of the last month before the fire, I am confident I had been at the*

house once or twice a week; at those times there was the same wretchedness of appearance as when I was there the last time; in fact, Mrs. Leworthy and family had been very ill a long time, in consequence of which, I advanced them £10 to complete the work they had then in hand; I believe it was to Leworthy himself that I advanced that money—witness saw Mrs. Leworthy and her children there before they went to Bristol—*they appeared to be in a most miserable condition, I assure you—in point of wretchedness and poverty, nothing else appeared round the dwelling.*

Cross-examined by Mr. Serjeant Pell.

Witness. To the best of my knowledge it was about 6 weeks before the fire that this conversation took place about the feathers—it was about the beginning of November or the end of October; I am confident it was about 6 weeks or 2 months previous to the fire; I would rather say what was accurate, than say a word to the prejudice of Leworthy.

Q. Will you swear, this was as late as the August preceding the fire?

A. I certainly can venture to swear it was as late as August; but I cannot conceive the time was so long between—I believe it to be after August, and indeed after September.

Q. Recollect—will you swear that it was as late as September?

A. I cannot immediately swear to the time it really happened, but I know the circumstance did take place previous to the fire. I cannot actually swear to the day, not being in possession of those docu-

ments that would furnish me with the particulars, I cannot swear to the month.

Q. Then what made you swear that this conversation took place a month or 6 weeks before the fire?

A. It so struck me, and I have now no doubt of it, for I had not at that time been more than 6 weeks in Bath—Mr. Stafford, who was my clerk, then acted as agent of Mr. Barron, the brass-factor at Birmingham —This bill had been originally given by Leworthy to Mr. Barron, and was not paid when it became due; it was then renewed; the renewed bill was not paid; and Stafford, as Barron's agent, requested me to take goods of Leworthy to the amount; I took a quantity of feathers and the bedstead; therefore, calculating the time the original bill had to run, and then the time of the renewed bill, I have no doubt I am accurate.

Q. Now can you tell me, after having so stated the story, when this conversation took place?

A. I presume it was either in September or October.

Q. It might be in the latter end of August?

A. It is possible, but I do not believe it.

Re-examined by Mr. Gaselee.

I cannot think the conversation about the bill was more than 2 months before the fire; possibly it might be more; yet still I cannot believe that it was more than 2 months.

Mr. William Evill *Sworn. Examined by* Mr. Moore.

Witness. I am an upholsterer and auctioneer at

Bath—went to Leworthy's house on the 12th *of November* or thereabouts—it was certainly within a day or two of that—I went to buy a table-bedstead—I passed through the shop—I was shewn down to a place under the shop (in the dwelling house); it appeared to me to be an old kitchen—I saw no upholstery or cabinet articles there; I saw some things, 5 press beadsteads, which were near finishing; and Leworthy told me I should have one home in 3 or 4 days; and he sent me one home, for which I paid him —I also saw in this kitchen a work-bench, some bedsteads, and, I think, an oval mahogany dining-table; but I am not sure whether it was not in the room above that I saw the table. Not expecting to be called upon on a future day, I did not notice whether there were any other articles there; I made observations upon what was in the front shop as I passed through it—*A very short time after I had been there, I gave my opinion of the goods that were in it, that I didn't think there was £20 worth of them*—I observed some old chairs, tables and bedsteads—*All the things which I saw there, I don't think worth £20* —in September 1807, I sold some things for Leworthy—September the 9th, 10th, 11th, I believe there were some lots in each day's sale—I have my catalogue here—I sold to the amount of £54 16*s.* 6*d.*—In the November following, I sold some articles for Leworthy which he had previously sent to my shop—that is my original catalogue of the goods I sold at that time—*£12. 1s. 0d. was the value of the goods I sold for him in November*—those goods came from Leworthy's; they were brought in his name to my place,

and, I believe, came from his warehouse in Lady-mead —my clerk paid him the money after the first sale, and I paid him after the second.

Cross-examined by Mr. Dampier.

Witness—I had bought things of Plaintiff before then, at different times—I don't recollect having bought any in the course of that year, at least any thing of consequence, any thing exceeding two or three pounds—I never bought goods of him to the amount of a hundred pounds—never in my life—I don't at all recollect when I bought goods of him—I have bought small things of him when I have been in want of them, and could not get them elsewhere. I have no recollection of ever having bought any considerable quantity of goods of him.

Q. In the course of these dealings, had you been up into the front dining-room?

A. I have been up in the front dining-room.

Q. Do you remember buying 5 pair of card-tables of Plaintiff?

A. I never did—I have seen some; but I never bought to the number of 5 pair of him nor of any one else. [The witness was here looking into some account book.]

Q. You have looked back no further than as relates to the questions which my learned friend has asked you?

A. I have not looked back further, but I am confident that I never bought 5 pair of card-tables, nor 4.

Q. Nor 3? I want to know whether you can

pretend to say you never bought any card-tables of Leworthy?

A. I cannot without my book.

Q. Do you know the man that worked for him, Collyer?

A. I do not.

CHARLES GREEN *Sworn.—Examined by* MR. GASELEE.

Witness—I worked for Leworthy—I am now in the 2d regiment of Somerset militia—I worked for Plaintiff not quite a twelvemonth—*I left him a month or 5 weeks before the fire happened*—it was in November—I cannot say what stock Plaintiff had when I first went to him—*I can tell what stock he had at the time I left him—at that time he had hardly any at all*—his stock decreased as fast as it increased; as fast as it was manufactured it was taken away, and sold at the different auction rooms in the town at Bath—his stock of timber was very little indeed that he had;—during the time I was with the Plaintiff I was constantly employed by him, I didn't work for any other man till the time I left him—there was one Burdock that worked for him when I went there first, and John Collyer, and James Barnes, apprentice, and John Horsey—they did not continue to work for Plaintiff till the time when I went away—Burdock left him and went and set up in Exminster, to the best of my recollection, in the month of May, it might be in April—Collyer left him a great while before I left him—after I went away, I understand, Collyer came again—Barnes died—there was a man of the name of Horsey, I believe he came in April; he went away

very nigh two months before I did—*Plaintiff got no one in the room of Barnes and Horsey while I was with him—it was not above a week before I left that I was the only man who worked for him*—Sometimes I was obliged to stand still for want of timber; the last job I left for want of materials to finish it.—*I worked by the piece—having no materials I left him**. I then went to work for Mr. Webb in the London Road—*I do not believe there were £30 worth of goods in the house and shop when I came away*—I recollect there were press bedsteads down in the kitchen, whether two or three I don't know, which the Plaintiff sold at £2. 10*s*. each; I believe them that were painted he sold for £2 15*s*.—In the front shop there were one or two press bedsteads; as far as I recollect there was a few toilettes or dressing tables.

Q. When you are speaking of the value you think the stock was of, do you speak of every thing in the house, or only the things in some particular room?

A. In the shop; the goods he had for sale are what I am speaking of, what we manufactured.

Q. Do you recollect the feathers?

A. I never saw any quantity of feathers in the the house—I have been up in the attic, but not very

* This directly negatives the assertions of the Plaintiff and of his witness; one stated that Green left the Plaintiff to go into the militia; the other, that he struck in consequence of a difference with the Plaintiff respecting prices—Green himself swore, *that he left merely because he had no materials to go on with his work*; and, so far from leaving to go into the militia, *he went to work for another master*.

frequently—I suppose it was about two months before I left him that I had been up in the attic—*I never saw any feathers at all there, except what were lying about the room—I saw no feathers piled up in the attic—I never saw any feathers brought in while I was there*—I used to work in the back shop—I don't believe there was £5 worth of timber in the yard and back shop when I left.

Cross-examined by Mr. Serjeant Lens.

Witness—It was in November, 1807, that I left the Plaintiff—I remember the time precisely—*at that time there was no quantity of feathers that I saw*—if there was a great quantity I don't know where they could put them; I must have been blind, or I should have seen them—*there certainly was not a quantity of feathers in the house at that time*—I know a gentleman of the name of Crosse—I know nothing about Mr. Crosse's coming to the Plaintiff's house to see a quantity of feathers—he never did come as far as I know.

Q. And if he had come, there were no feathers there for him to see?

A. There were none there.

Witness—I do not recollect what things were there when I first came—I can recollect the things that were there when I left, because the time is shorter—I don't know that I went away in any ill humour, for Leworthy was out of town when I went away—I certainly was very much offended with Leworthy; for I never could get my money of him, except bad halfpence of a Saturday night.

Q. Did you not say you wished he might be hanged?

A. It is very likely I did—It was through him I came to be in the militia—It was the distress he brought me into, by not paying the money due to me, which occasioned my being there—I believe I said I would give myself the trouble of going 10 miles to see Leworthy hanged.

Re-examined by Mr. Gaselee.

Q. Upon what occasion was it you said that you would go 10 miles to see Leworthy hanged?

A. I recollect saying so in the yard in front of the court yesterday morning—there were two of the opposite party present—they were Leworthy's witnesses, and were talking concerning the trial that was coming on, and provoked me by their talk, so I made that remark; for it was through him that I was drove into the militia—I believe that was the only time I said so; I don't recollect that I ever said so at any other time.

Abraham Whittick *Sworn. Examined by* Mr. Moore.

Witness—I lodged at Leworthy's in the year 1807; had lodged there about 4 years, and till just 8 weeks before the fire—*my room was the front attic—there were no feathers in the front attic while I lodged there*—there were a few feathers in the back attic sometimes, and some flocks—*there were no feathers there when I left the lodging*, 8 weeks before the fire—I used to go and sit in that room, to look over the fields and see

the people walking backwards and forwards along the canal.

Q. Mr. Baron Graham—You said there were some flocks there?

A. At times there were—at the time I left the lodging there were no more feathers there than there is in my hat—I remember a person of the name of Rogers—I remember things being carried out of the house—I suppose that was about 5 or 6 months before I left the lodging.

Q. Do you remember any after that?

A. Some men fetched away some at night—in September I assisted in carrying away things to Mr. Evill's—to the best of my recollection they were 24 bedsteads, four post bedsteads, field bedsteads, and press bedsteads, and some cabinet goods—I didn't go with any other goods except those to Mr. Evill's—others were carried away some time in the evening—one William Norman and his partner carried away some—this was after we took the goods to Mr. Evill's—I could not see what sort of goods they were which Norman and his partner carried away—it was night, and I was up stairs—I don't know what quantity it was; they might go away with goods 4 or 5 times to my knowledge.

Q. At the time you left the house, what was the appearance of the shop as to the stock of goods in it?

A. *Very little after we took away those things*—there was very little when I left it—*there were no flocks nor any beds* in the house—*Leworthy slept on a mattrass himself—they all slept in one room; himself, his wife, and children.*

Witness—The Plaintiff had no goods in the front dining-room when I left, except one press bedstead—there was nothing in the back attic—the door of the dining-room was generally open, so that I could see the whole room—in the front shop, I think, there were 4 or 5 bedsteads not stained—there was a little brown table and some other things, *but nothing of any great value*—I did'nt go down in the kitchen—very little timber in the yard or workshop—there had been a stock 3 or 4 years ago—a quarter of a hundred of deals at a time—I had not been in the workshop shortly before I left the lodging; but some time before, it was likely to fall down; I went down then—I can't say with certainty when that was—there was very little timber in the yard—I was a chairman at that time.

EATWELL LEO *Sworn. Examined by* Mr. GASELEE.

Witness—I lived servant with Leworthy 6 weeks and 2 days—I left him the 10th November, 1807—at the time I left, there were some goods in the front shop below—there was a little up stairs in the front dining-room, not a great deal—there was nothing at all in the attics—*in the back bed-room there were 2 bedsteads, with a mattrass upon one, and a little bag of feathers upon the other, which the children slept upon*—the children were small—*the house appeared like as if Leworthy was in great distress—there was no bed, and they paid for my lodging out*—Whittick left the house before me, I believe as much as a fortnight, if not three weeks—*no feathers came in while I was there—when I came away, there was not any in the house but the bag which the children slept upon*—

a great many people came after money—sometimes they got it—there was some person or another always teazing Leworthy for money—he paid when he had it—sometimes he could not pay—I do not remember any person, in particular, calling—there was a woman that he used to borrow money of—I don't know who she was—I saw her and her child together—she came for money that he had borrowed of her, a guinea and a half—she said she came for that—Leworthy was there—he did not give it to her while I was there—she never asked for money while he was there—Leworthy knew she had been there, for she drank tea—I never heard him say any thing about money—when the witness told him she came to ask for money, *he cursed, and said he would pay all his creditors one time or another.*

Cross-examined by Mr. Serjeant Pell.

Witness—Leworthy said that just before I came away; a fortnight before—I did not go with Mrs. Leworthy to Bristol; I went to Edward Street—Mrs. Leworthy was quite blind, the children had bad eyes, and I had bad eyes—people used to come for money, and some got it.

Q. Why, he was carrying on business?

A. Yes, he was carrying on business; but *I thought he was going out of it, from what I saw—he said he should sell it all.*

Q. You have said there were goods in the shop below?

A. In the parlour.

Q. Do you mean on the first floor?

A. Yes.

Q. The room over the shop?

A. Yes.

Q. Those were the best goods?

A. They were all the best.

Q. And they were piled up?

A. Yes, sir.

Q. Chest of drawers upon chest of drawers?

A. I know nothing of drawers; there were bedsteads.

Q. And a wardrobe, was there not?

A. Yes, sir.

Q. The furniture was piled up?

A. It made a great shew when it was piled up.

Q. When you came away, there was a good deal left?

A. Some of the lumber was left; the best was sold—there was a good deal left of lumber when I came away—I don't remember that the wardrobe was left—I had nothing to do with the goods—I came away a month before the fire—at that time the goods were piled up on one side of the room—we had a dispute once: I said *I wanted to come away when my month was up—Mr. Leworthy told me I need not be afraid of the money; for if people did come after their money, he would pay me my wages*—there was a little timber in the workshop, but not a great deal—the front house was built of stone—I never had been in the workshop—I did not go below to see whether it was of wood or stone—I do not know whether about the time I came away the Plaintiff had a good deal of work—*I don't think he had a good deal.*

Re-examined by Mr. Gaselee.

I said I wanted to go away at the end of the month—Leworthy said, I need not be afraid of my wages, though people did come after their money; and he did pay me, and I staid; that was all the dispute.

Q. You speak of there being some of the best sort of goods when you first went there that were piled up in the room over the shop; you mean over the kitchen?

A. The room over the kitchen.

Q. What room was it you spoke of in which the best goods were piled up?

A. It fronted to the street, the shop.

Q. Up stairs or down stairs?

A. Down stairs—in the dining-room over the shop there was a bag of glue, and 2 or 3 old bedsteads and 3 old chairs—it was pretty well empty—*the best goods that were piled up in the shop were sold off—there was only lumber left.*

Q. When was it he said he would sell it all; upon what occasion?

A. I don't know what occasion; it was to get rid of it, it was such rubbish.

Thomas Peacock *Sworn. Examined by* Mr. Moore.

Witness. My brother was acting Overseer of the poor of St. Michael's parish, in Bath, in the year 1807—Leworthy lived in that parish—I assisted my brother that year in doing his business as Overseer—I frequently applied to Leworthy for rates, but could not get them—I cannot pretend to recollect the last

time I called upon him—the last rate before the fire was assessed on the 6th of November—I cannot absolutely say whether I applied for that rate before the fire; most likely I did—before that, *I have frequently applied for two rates, the amount of which was* 16*s.*—this is the memorandum I made from the rate-book myself—it does not appear from the book what time I called for those two rates—I think I must have called for a rate some time in November; but I cannot take upon me to say positively whether I did or not—*I frequently called for the* 16*s.; it was never paid*—when I called, I frequently saw Leworthy—my application was made to him—*he told me he was unable to pay it—the Plaintiff paid no rate during the course of that year*—I cannot pretend to say how many times in the course of that year I applied to him for rates—certainly more than once or twice; frequently—whenever I went about for rates, I made it a practice to go into every house where rates were due—I went into the Plaintiff's house, among the rest, more than two or three times—I would not pretend to swear I applied more than twice or three times for each rate; but I dare say I did for each rate—I am sure I applied for 2 rates in the course of that year—there is no set time in St. Michael's parish for making poor-rates—I remember Leworthy's being drawn in the militia—I went to his house upon that occasion; it was the 18th of November—this is a duplicate of the notice I served him with; it is indorsed upon the back the day I served him—I cannot pretend to say that upon that occasion I applied for any rate—I saw Leworthy then; I saw him in the kitchen—I passed through the shop in the way to

the kitchen—I did not observe any great stock of goods in the shop—I cannot say there was any great stock of good furniture; there were a great many second-hand tables and chairs; but to particularize them I cannot—that was the observation I made several times; but did not make it on the 18th of November—I am not a judge of the value of such goods—I never went up stairs—[Mr. Serjeant Lens admitted the notice for serving in the militia.]

Mr. John Peacock *Sworn. Examined by* Mr. Burrough.

Witness. I was acting Overseer of the poor of Saint Michael's parish in the year 1807—I have got the rate-book with me—I employed my brother in that year to collect the rates, he did not receive them from Leworthy, nor have I ever received them—it appears from the book that they were not paid; *he is put down poor—for 2 years previous to* 1807 *I put him down in the parish-book as uncollected; and in the year* 1807 *he is returned poor* for 3 rates—before I put down persons as absolutely *poor* who cannot pay their rates at the time they are demanded, I enter them for a certain period in the parish-book as *uncollected,* in the hope that they will yet be able to pay.

Mr. Richard Else *Sworn. Examined by* Mr. Burrough.

The witness produced a book, containing an affidavit made by Leworthy on the 4th of December.

Witness—I was present when it was sworn—the Plaintiff was sworn before George Edward Allen, esq. deputy lieutenant—the deputy lieutenant does not

sign his name to this book, but to another book on the same day; there is a book by which persons are ballotted, which book I have here; and to prevent improper affidavits being taken, an oath is directed by the act, to which every person taking the oath subscribes his name and the date of taking it; this is the book by which the draft into the militia appears—*it appears that Leworthy attended on the 4th of December* 1807, *when he took this oath*—I administered the oath myself as clerk to the deputy lieutenant—I have not the other book here, as I did not think it necessary—I referred to it before I came here, and I swear——

Mr. Serjeant Lens. O, sir, that won't do.

Q. Has he signed his name to any thing there?

A. Yes, to the oath,

Q. Did you administer the oath for him?

A. I administered the oath to him as clerk to the deputy lieutenant—it is in these words——

Mr. Serjeant Lens. This is not the affidavit taken and sworn; it is another insertion of it; the very book in which the affidavit is signed is left at Bath; and in that book so left at Bath, it is that the jurat appears.

Mr. Baron Graham to the witness. I understood you to say, that you read over to Leworthy the oath in that particular book, and that the oath is there?

Witness. It is my Lord, and he has signed it.

Mr. Serjeant Pell. Is the deputy lieutenant's name signed to that?

Witness. It is not

Mr. Burrough. Is there a jurat of that oath in any other book?

Witness. The oath is not written or signed in any other book than the one I have here.

Mr. Burrough. Is there a jurat of the oath as applicable to Leworthy's affidavit *there* in any book?

Witness. It is in no other book than what I have now; this is the only book; and I have brought it here for the purpose of proving Leworthy's signature.

Mr. Serjeant Lens. You told us just now that Mr. Allen, the deputy lieutenant, signed his name in the proper book, in another book, which other book was left at Bath.

Witness. I was asked who was present when that oath was taken? I replied George Edward Allen, esq. The militia act expressly directs that the oath shall be administered in the presence of a deputy lieutenant—I mentioned that the fact was so, in order to satisfy you that this oath was properly administered.

Q. Is there not another book in which the jurat before Mr. Allen appears?

A. In this book Mr. Allen has not signed the affidavit, nor is it necessary; the act does not require it, it only requires that the oath shall be taken in the presence of a deputy lieutenant.

Q. Why then did you talk about another book that was left at Bath, in which the jurat *did* appear, and which Mr. Allen had signed?

A. I never did talk about it—I told you that Mr. Allen was present, and that I knew he was present from another book that was signed by him.

Mr. Burrough. And from memory you know there was a deputy lieutenant there?

A. O, yes; more than one at the meeting.

Mr. Burrough. Now read it?

Mr. Else read as follows:

"I, William Leworthy, do swear that I am "not seized or possessed, either in my own "right, or in right of my wife, of any estate "in lands, goods or money, of the clear "value of £100.——so help me God!

"(Dated) 4th Dec. 1807.

(Signed) "Wm. Leworthy".

Q. That is signed by Leworthy himself?

A. It is; this is his signature.

Mr. Thomas Linnell *Sworn. Examined by* Mr. Gaselee.

Witness. I keep the Bladud Inn, in Walcot Street, Bath, *next door to Leworthy's*—I have known Leworthy 7 or 8 years, he had lived there as long as I have, and I have been in my house 8 years last December—when first I knew him he was in the brokering line; he had a good deal of business at that time; I think he was rather slack at last; for 2 or 3 months before the fire he did not keep so many men at work—the last thing I bought of him was a pair of steelyards, that might be the beginning of November, or it might be the latter end of October [1807]; I did not then take any particular notice of his goods; there was a good deal of one sort or other, old goods; there might be some new; I have seen a better stock there—we had no money dealings lately,

not for a year or two—none in 1807—I cannot particularly say how lately before the fire *I had lent him money*—I don't think I lent him any that year [1807], it might be the latter end of the year before —*I only lent him money now and then, when he wanted money of a Saturday night—I discontinued to do so; because whenever I lent him money I was obliged to take it out in goods: I never could get him to settle an account, unless I took it out in goods*—I do not recollect being on the premises after I bought the steelyard; and before the fire, when I bought the steelyard, was the last time; then I was only in the front shop.

Mr. Gaselee.—We shall want you again, Mr. Linnell, upon another part of the case.

Cross-examined by Mr. Jekyll.

Witness.—I was Leworthy's next door neighbour—let him have money in this kind of way to pay his workmen for 5 years, perhaps 3 or 4 times in the course of a year—it might be merely an accidental thing—I don't know that it was a mark of poverty.

Mr. Abraham Nonmus *Sworn. Examined by* Mr. Moore.

Witness.—I am an auctioneer at Bath—I remember going to Leworthy's house 2 or 3 years before the fire; not latterly—*Leworthy came to me about 3 weeks before the fire*—he asked me if I had not a sale coming on? I told him I had—he said he had a quantity of goods he could wish me to sell for him, if I could make it convenient to take them into the auction—I wished to decline it—I told him I had not had any former dealings with him, and I should

rather he employed Mr. Bennett, the same auctioneer as he employed before—he gave some reply, which I don't remember, except that he said he had employed Mr. Bennett in previous sales, but he did not choose to employ him then; he wished to employ me—I then asked him what kind of goods they were—*he said he should sell all that he had—the reason that he gave was, that he had been teazed and harrassed by a great many people for money, and he would get rid of it*—he complained very much of the times being bad, and *said that he was very poor*—I undertook to sell the goods—I didn't go to his house upon that—he desired me to send my porters—I sent two—they brought what we call two horse-loads in Bath [a porter's *horse* is a kind of small stage, carried on poles, in the manner of a sedan chair]—I can tell you the articles, by referring to my book; but they were very old things, very old indeed; *the total of them amounted to £9 1s.; they were old furniture*—this is a memorandum I made at the time—I did not afterwards go to the Plaintiff's house—I received nothing a few days before the fire—I received nothing but at that time, which was household-furniture, *and a bag of glue—the glue was not included in the £9 1s.—the weight of it was about 71½lb.; it was sent with the other things to turn into money for him, by selling it by auction*—it was not sold till after the fire—it was not sold when the furniture was, because there were no bidders—Plaintiff received the money for the goods sold previous to the fire—the money for the glue he received afterwards.

Mr. Moore.—We shall want you again, Mr. Nonmus.

Cross-examined by Mr. Serjeant Pell.

Q. It is a common thing in Bath, is it not, for persons carrying on a business of a description similar to Leworthy's, to send goods for sale to persons in your situation of life?

A. *When they are in distress.*

Q. When they want money?

A. When they want money.

Q. Which am I to understand; whether it is when they are in distress, or when they want money?

A. It is one and the same thing, I think.

Q. Is every one who sends goods to be sold in distress?

A. No.

Q. I am told a good deal of old rubbish is sent to your house to sell?

A. Sometimes there is rubbish sent with the better goods—I should find rubbish among your goods if I were to sell them.

Q. You think you would?

A. Goods of all sorts I am obliged to take with a sale—there is rubbish in every gentleman's house.

Q. What did the glue sell for?

A. *Ten-pence halfpenny a pound.*

Q. That was after the fire?

A. *It was after the fire I sold it; but Leworthy sent it with the other goods before the fire.*

Mr. Moore.—Is it a common thing for tradesmen like Leworthy to send goods for sale in this manner, when they are not in distress?

A. I very seldom knew an instance of it.

Mr. Serjeant Pell.—You don't always ask, when persons send goods for sale, whether they are in distress or not?

A. I have no business to ask.

Thomas Lacey *Sworn. Examined by* Mr. Gaselee.

Witness.—I am a chairman—was one of the persons who carried the things from Leworthy's to Mr. Nonmus's—went to Leworthy's for them—some of them Leworthy brought from up stairs, and some from the lower part—I did not go up stairs—went no further than the shop—*there appeared to be very little in the shop*—I saw no other part of the house—went no further than the back parlour—there *I saw Mrs. Leworthy sitting on a chair and 2 children sitting on the floor—I saw nothing of furniture but an old table*—this was a few days before the 19th of November.

Mr. Joseph Moss *Sworn. Examined by* Mr. Moore.

Witness. I am a victualler—*I went to Leworthy's*, I believe it was in the *beginning of December* 1807—I went to buy a four post bedstead for Mr. Thurston—I went in the first place to his shop—he was not within; the shop was locked up—they told me, if I called at the Bladud's Head I should very likely meet him—I called again at the house, and found Leworthy at home—I saw the shop, but I did not get what I wanted: he had not got it—we looked round the lower part of the house, and he had not such a thing made—I passed through the shop—*I saw nothing of*

any value in it—I went into a lower place to look for a bedstead; I believe it is a kind of kitchen; it was under the shop: there were some new bedsteads that appeared to be like garret bedsteads, and press bedsteads—I just went within the door of the room behind the shop: I saw nothing but a work-bench that was there then, and some tools that were lying on the bench—I did not take particular notice, for I was only looking for a bedstead—*it did not appear to me there was any furniture of value; it was lumber what I saw: that was the observation I made at the time—all that I saw appeared to me not worth above £20*—the £20 includes what I saw below—I did not go into the workshop behind the house—the house had not the appearance of being in a good condition at all; it seemed as if no one occupied it—Mrs. Leworthy was gone to Bristol some time—there seemed to be no fire—nothing of that kind in it—Leworthy was out a good deal at that time—I did not see any goods of value—it was second-hand bedsteads and some new bedsteads—he promised me that the bedstead should be done on the Thursday following—I called on the Thursday, and the door was locked up, this was about the middle of the day, about 11 or 12 o'clock—I cannot say positively that this was the Thursday before the fire, most likely it was, because it was certainly the beginning of December—I called again before the fire and saw Leworthy—he told me I should have the bedstead immediately.

Mr. Dampier.—Q. You went to look for a four post bedstead; you did not find one, and you did not particularly examine what was there?

A. No, sir; not very particularly, but I can tell what I saw.

MARY COOLING *Sworn. Examined by* MR. GASELEE.

WITNESS. I live at Mr. Lewis's next door to Leworthy's—I remember going to Leworthy's for some shavings *not quite a fortnight before the fire*—I went into a back room behind the shop, the back parlour—I went into no other room, for I went to beg a bag of shavings—I went into the passage and looked into the shop to scrape up some shavings—*in the shop there were 2 or 3 old candlesticks and a few flat irons, and some other old materials*—I am speaking of the front shop.

Q. Were there many materials or any drawers or things of that sort?

A. *There were some, I imagine; but it appeared to me like an empty house.*

Q. Could you see into the Plaintiff's yard, and was there any stock there?

A. From the house in which I live I could see into the Plaintiff's yard—there were a few pieces of odd plank in the yard, which would not have been enough to build me a pig-stye.

EDWARD MILLER *Sworn. Examined by* MR. MOORE.

WITNESS. I am foreman to Mr. Thomas Lewis—I worked for him in 1807 at Mr. Linnell's brewery, next door to Leworthy's house—was there till the latter end of October, about 5 weeks before the fire—I could see the yard belonging to Leworthy's house—I perceived a few planks of beech or some kind of

wood there—I saw but a few, I cannot speak to the number—I saw into the workshop through an opening which they were obliged to make into it; there appeared to be 3 or 4 sets of bedsteads in it—I believe they were at work upon a press bedstead; through this opening I could see every thing in the shop—it was not full, but the contrary; there was but a few sets of bedsteads, and a few odd materials—*I perceived no stock of timber or materials—if there had been any I should have seen it.*

MARY LEWIS *Sworn. Examined by* MR. BURROUGH.

WITNESS. I lived next door to Leworthy's—I remember his coming to me *the morning before the fire—he wanted to borrow a shilling to buy some victuals, but I would not lend him one*—I told him I had none—*he said he wanted a shilling very bad,* and I said I had none to spare—he said too that he had a good deal of money owing to him, but he could not get it in—I laughed at him because I knew it was not true—sometimes I had lent him money before—a shilling or sixpence; sometimes a couple of shillings—I got it back again after a good while—I did not ask him, but it was very long before he would pay—*I had money when he wanted to borrow that shilling, but I did not choose to lend it*—he went out and came in again some *part* of the day—I saw him unlock his house and go in—he staid away till just dusk from the middle of the day—*there were no persons there but himself* to my knowledge—his wife and children were not there—I remember his coming in the afternoon to my house to light a candle—it was just in

the dusk when some persons came to look at a bureau bedstead, and he came to our house to light a candle to shew it them—the shop was shut up on that day—some of the shutters were shut and one open; one shutter was open when he went out—this was the front shop; *the windows of the front shop were at this time all to pieces, all the squares broke*—I don't suppose there was a whole square in the glass—*the house was certainly in a shocking condition—this was on the morning before the fire*—I looked into the shop in the afternoon when he sold the woman the bedstead; when the candle was lighted after the bureau bedstead was gone, *I could see nothing but a little rubbish, except the pair of drawers that was saved*—there was an old flat candlestick and a little rubbish—*there was no quantity of goods nor had been some time*—there had been nothing to say since the sale was, which was half a year before—I had an opportunity of seeing from time to time what there was in the shop, and *did* see—*I observed how much poverty was getting there—I observed this several times*, from time to time after the last sale.

Q. *Was the poverty you speak of coming on gradually?*

A. Yes, sir, increasing gradually.

Q. So that the last afternoon before the fire you say there were only those few things?

A. No, sir, there were not.

Q. And you can safely say so?

A. Yes, sir, I can and do—I saw the windows of Leworthy's front shop closed in the day time, from the time his wife went away, about 3 weeks—many days they were shut, he had nothing to shew—we

could very easily see that when the door was open, and we did see it.

Cross-examined by Mr. Serjeant Lens.

Q. When the Plaintiff came to borrow a shilling, was it not to give change to some one in the shop?

A. No, there was no one there.

Q. What made you so forward in saying he wanted to buy victuals?

A. *Because they were so poor.*

Q. Don't you remember Saxty's saying, that you and your husband pillaged his premises at the fire?

A. No—the people got upon our tiles and broke them very much at the fire; and I said to a person in the yard, it would not be any harm if I had a few of these tiles and put them where mine were broke; he said, it could not be any harm.

Q. This was not Saxty?

A. No.

Q. Then have you not been charged by Saxty with having pillaged his property after the fire?

A. No.

Re-examined by Mr. Burrough.

Q. Is there any pretence for saying that Mr. Saxty charged you with stealing the tiles?

A. No, sir. He told me to put back again the 2 or 3 tiles I had put where my own tiles had been broke, and said, I had no business with them—I told him I thought it no harm; but I certainly would put them back if he desired it—I took the tiles out of Leworthy's yard the night of the fire—

the fireman broke my tiles—Saxty was the owner of the house.

Q. So that, in consequence of damage that was done to your tiles during the fire, and by the endeavours that were made to extinguish it, you took up 2 or 3 tiles to replace those of yours which had been destroyed?

A. Yes, sir.

MR. ABRAHAM NORMUS *examined again by* MR. GASELEE.

WITNESS. When Leworthy came to my house, as I before stated, there was some conversation took place respecting the insurance respecting the plate that I was nailing up that I had from the insurance office; I nailed it up on the beam of my auction-room, as I generally do—he appeared to be very ignorant respecting insurance—I don't know that I can tell the precise words he used; I can tell the meaning of it: *he asked me what it (the plate) meant*, and where I insured, *and the nature of insurance* *? He asked what *that was? and said he had many times wanted to insure, but didn't know exactly how it was to be done.* I told him there was no difficulty: he had nothing to do but go to the insurance office, and tell them the sum of money he wished to insure for. I told him the best thing he could do would be to go to the insurance office I insured at, which was the Old Bath Fire Office: they would tell him

* This pretended ignorance of the nature of insurance was shortly before the fire, after he had been insured nearly two years.

any thing further about it. And he asked me, what I insured for? I said £500. Then *he asked me, whether, when a person was insured for any sum of money, if any thing was lost by fire, the insurance office paid to the whole amount of what they insured?* I said no; that was not the case: that *they always allowed*, by what I understood, *the amount of what was lost by fire*, let it be little or much, not exceeding the sum insured.—He made use of words to this meaning, *that he never was insured; that he many times wished to insure; and he would go immediately to insure.* I won't speak to the exact words.

Q. When you said, they only paid the amount of the loss, be it little or much, did he make any answer to that, or any observation upon it?

A. I don't know whether he said he would go and insure before or after that; but I know it was mentioned in the conversation. He appeared ignorant of the nature of insurance, as I thought—I didn't know that he had insured.

Cross-examined by Mr. Jekyll.

Q. You told us, I think, that, at the time when this conversation began, you were engaged in nailing up one of these leaden plates?

A. I had nailed it up, and was coming down from the steps.

Q. He found you then in the act of nailing up this plate?

A. He did when he came.

Q. The conversation began upon the plate you were nailing up?

A. I don't know whether he said first something about that or about the sale; it was in the course of that interview.

Q. But during the time you were nailing up this plate he was present?

A. He was present by the time that I had nailed it up: I was coming down from the steps.

Q. Do you recollect how the conversation began by him?

A. By seeing me nail it up.

Q. What did he say first of all respecting the plate that was nailed up?

A. He said, what is that? and made an observation that it was a very good place to nail it up to.

Q. The conversation arose on the subject of the plate which you had been nailing up?

A. It did.

Q. The plate which you had been nailing up was for the insurance of the building?

A. For insuring the internal part of my premises; the landlord insures the house.—There was no conversation between us about the insuring of houses as contra-distinguished from goods; nothing of that sort, whether property or houses.

MR. THOMAS LINNELL *examined again by* MR. MOORE.

WITNESS. I remember seeing Mr. Wiltshire and Leworthy together *the very morning of the fire*, or the morning after the fire took place: they were in my bar.—*Leworthy declared to Mr. Wiltshire that he was not insured for a shilling.* Mr. Wiltshire put

the question to him; he asked Leworthy if he was insured? Leworthy said, not for a shilling.

Mr. Moore. We shall want you again, Mr. Linnell.

Cross-examined by Mr. Serjeant Pell.

Witness. This was between 9 and 10 in the morning—the fire was over about 5 in the morning—Leworthy had not been in my house before—Mr. Wiltshire came in first and inquired after him, and I called him in.

Q. What was the state of the man at this time?

A. The state of the man, quite well—He could not be merry—the man appeared to be rather distressed—he didn't appear to be so very much distressed—he appeared agitated of course, as a man would in the situation that he was in—he was with Mr. Wiltshire not longer than 5 or 10 minutes.

John Wiltshire, Esq. *Sworn. Examined by* Mr. Gaselee.

Witness. I remember seeing Leworthy after the fire—it was the morning after the fire, at the house of Mr. Linnell, the Bladud's Head—I asked him whether he was insured, *he said, not for a shilling*—he was with me 5 or 6 minutes, not more—*I was endeavouring to procure a subscription for him*—he came to me from among the ruins, where he appeared to have been hard at work; he was very dirty, and he said he was very much distressed—I think he must perfectly have understood my question, for I put it to him in a very pointed manner—*I turned*

round short to him, and said, were you insured? he answered, not for a shilling.

MR. DAMPIER. Q. Were these all the words that past?

A. They were not; they were a part of the conversation.

MR. GASELEE. Mr. Wiltshire will have the goodness not to go away.

MR. ROBERT SAXTY *Sworn. Examined by* MR. MOORE.

WITNESS. I was owner of the house Leworthy lived in—I saw Leworthy the morning after the fire—there was some conversation between us about the insurance; but, I believe, the first question I put to him, was, to know what part of the house he slept in—*I asked him whether he was insured? he said he was insured formerly, but had missed paying the insurance money that year*; then I said, you are none the better; *he said, he knew he had no claim*—on the same day; in the morning, I was with Mr. Smith, agent for the Sun Fire Office, and Leworthy at the George public house, in Bath—*Mr. Smith said to him, my friend, why did you omit paying your insurance money?—Plaintiff's answer was, to tell you the truth, sir, I could not spare the money*—I immediately took pity on him, and said, I should make a gathering for him—his wife at that time was at Bristol—we had some further conversation after I had advertised his case—that was the week following—I put it into the paper on the Monday after the fire, *and stated that he was not insured; and he came to me the next day and said, he*

was very sorry that I put it in the paper, as his wife had found the receipt for the insurance in her pocket-book; I only told him, he made me look very foolish, and I was sorry to have had any thing to do with it—some time after that, Leworthy shewed me a statement which he had made out of his loss—I did not make a memorandum of it, and cannot charge myself with any time—it might be more, or it might be less than a week or a fortnight—*he shewed me his claim upon the office; and the moment I saw it, I said, take it back; don't send it by any means*—I believe this was after the advertisement—I don't know whether I should recognize the paper again or not; I only looked at the sum; *I saw the sum of £745 upon it*—I saw the amount myself, the figures.

An objection was made to the evidence.

Mr. Burrough. That is evidence—what he sees upon a paper produced by Leworthy himself, and upon which the witness made an immediate observation to him, it is part of the *res gesta*.

Witness. I was in conversation with Mr. Arnot, the agent of the Globe Insurance Company, who was the person with whom Leworthy had insured, at the door of the Gloucester Inn, in Walcot Street, and while Arnot was gone in to speak to a friend, *Leworthy came up to the house with* his claim.

[The witness was here shewn the original claim delivered into the Globe office.]

Witness. That is the paper which he produced—when he came up, *he said he was going to give the claim to Mr. Arnot, to send up to the office*—he shewed the paper to me; and *the moment I saw it, I bid him take it back, and never shew it to any one*, but

to send *up a small claim—he made me no answer, but took it back again.*

Q. What made you give him that advice?

Mr. Serjeant Lens. It is no evidence what was passing in his mind.

Q. Did you explain to him at the time your reason for giving him that advice?

A. *I told him I thought it was a great deal too much* —he said nothing, and went away—I was his landlord—I had not been in the habit of going to the house for, I believe, a year and a quarter, or a year and a half, I don't know which; we had a few words, and I didn't go near the house.

Q. Do you know the Rev. Mr. Crosse?

A. I do.

Q. Was Mr. Crosse there at this time, or at any time when this paper was produced?

A. In the week following Mr. Crosse brought me a claim upon the office.

Mr. Serjeant Lens. Was Leworthy there?

A. He was not.

Mr. Moore. This is to contradict what Mr. Crosse has said.

Q. Did Mr. Crosse produce any claim?

A. When Mr. Crosse came into the house he produced a paper, and said——

Mr. Serjeant Lens. You are to tell us nothing of what Mr. Crosse said, unless Leworthy was present.

Mr. Burrough. It is evidence. We asked Mr. Crosse if he put a policy or any paper into Mr. Saxty's hand, which he denied; what Mr. Crosse said at the

time he produced a paper, is part of the circumstances explanatory of what he did so produce.

Mr. Serjeant Lens. If your intention is only to shew that Mr. Crosse did in fact produce a policy to Mr. Saxty, Mr. Crosse saying that he did not, you had better go to that at once.

Q. What was it that Mr. Crosse produced to you?

A. *It appears to me to be the same paper that is now produced.*

Cross-examined by Mr. Serjeant Lens.

Witness. I believe this conversation about the insuring was before Leworthy saw Mr. Wiltshire; I think it was between 9 and 10—I do not recollect Leworthy's saying, that Arnot had not paid his insurance for him—I know of nothing passing between us about Mr. Arnot—*he cut it short, he said he was not insured.*

John Winter *Sworn. Examined by* Mr. Gaselee.

Witness. I live at No. 5, Corn Street, Bath—in the month of December 1807; I was a watchman just above Leworthy's—before the fire I never heard Plaintiff say any thing about his insurance; but he did after the fire—I never knew the man before the fire —*the day after the fire*, between 10 and 11 o'clock, I saw him at the Crown—*he* gave me a glass of gin and water, *and said he was insured for £*400—I was on duty upon the night in which the fire happened; my stand is not more than 100 or 150 yards from it—the fire broke out a little after two; I had cried my round, and just got back to my box again—I hadn't been in my box a few minutes, before I heard

some person cry, *watch!* 3 or 4 different times, as hard as they could halloo; I was leaning myself over the box as I might now, with my lanthorn in my hand, and as soon as I heard the woman cry, for I judged it to be a woman by the shrill voice, I jumped out with the lanthorn in my hand, and run as fast as I could, and I was down in the space of a minute or two.

Q. Did you hear, or smell any thing of fire?

A. Not before I was going toward it—The first thing I observed, was the back shop on fire, which I could perceive over the slaughter houses—I know the voice was near the house, but I did not see the person it came from—the first place I saw on fire, was the back shop; I could not see the front then, because I was not got far enough; but I saw the fire coming from the back settlements, [in coming from the watchman's stand towards Leworthy's house, there is a sudden turn in the street; at this turn there is an opening as it were at the back of it, through which a fire in the back part of Leworthy's premises would be seen from over some slaughter houses, but the turn itself hides the front part] I could see the back part of the house plainly; but I could not then see the front, I was not got far enough.

A model of the house and premises was produced, by means of which the witness explained what his situation was with respect to the building when he first saw the fire in his way from his box to the house.

I saw the fire come from the roof of that little piece of building [the workshop]; I was then standing on Mrs. Lewis's side of Leworthy's house; I could

not see that side, because it was joined to Mr. Lewis's —I could perceive the flames come from the back part, but I could not perceive the building—*the flames did not come from the dwelling house by a considerable way*—on seeing the fire, I ran toward the front of the house as quick as possible—I went to the front door —*I saw the fire coming out through the joints of the window shutters*; the shutters did not reach the top of the window—at the same moment *the front attic over the dining-room was on fire*—that is quite at the top of the house—*there was no fire in the front dining-room* —I hallooed to alarm the people in the house, and tried to break the door open—I did not know but there were families in the house—I could not break open the door.

Q. Upon your hallooing did any one come?

A. *Leworthy came to the window* and spoke to me—*he came to the middle window in the front dining-room*; *it was not more than a minute or thereabouts after I called out*—when he came to the window he had something of a jacket on, or a waistcoat with sleeves—he was completely dressed except his coat; I said the house is all on fire, make your escape as quick as you can, or you will every soul of you be burnt in your beds—I said, don't be afraid—if you are afraid to come down stairs, jump out of the window, and I will catch you if I can—upon that he said there is no person here but myself; and added, *I have got a coat back here*—says I, never mind your coat, make your escape as quick as possible—but he shut down the window again; and while he was gone to see for his coat, I hove a plank up to the dining-room, and laid it on the wall joining to the street, [the low wall

of a little court in front of the house] and broke the dining-room window in with it—then I jumped upon the wall, and stood upon it—it was the centre window of the 3—the wall in front was about 3 feet high —*when I had got upon the wall, I could see into the dining-room after the fire came into it, but not before*; the house was a low-built house—when Leworthy went to see for his coat, he opened some kind of a door into the back room—I saw through the window—he was rather behind the door, and I could perceive him very well as the flames came round—the fire came through the door that he was going through to come down stairs—the fire came out of the back door room—I saw him bring the coat to the window and throw it out; I picked it up and put it over the low wall directly—when that door was opened I could see him after throwing his coat out at the window—he came and sat down upon the plank that I had put up to the window—he sat down upon the end of it, and slipped himself down.

Mr. Baron Graham. Q. Supposing there had been no plank, and he had hung by his hand out of the window, what height must he have dropped?

A. It was a very low house; but I can't exactly say the height—I don't think the cieling of the front shop was above 6 feet or 6 feet and a half high, and the windows were very low: the wall was 3 feet high, so that a person on the wall was even with the windows of the dining-room.

Q. When he came down the plank, how was he dressed?

A. He had got his oil case hat on—he had got some

kind of jacket or waistcoat; a pair of small cloaths and stockings—in short, he was dressed as he usually is, except his coat.

Mr. Baron Graham. How were his stockings?

A. I did not perceive, but that they were tight as usual; I did not perceive that his legs were naked, any part of them—I did not observe whether he had shoes or a neckcloth on—I did not take such particular notice as that—I did not observe whether Leworthy had an oil skin hat on the first time he came to the window, but he had the second—from the time of his shutting down the window to his returning to it again, and coming out upon the plank, might be about 2 or 3 minutes, as well as I recollect—when he had come down the plank, he and I broke open the front shop-door together—*whilst I was upon the wall after the door was opened and the fire came in, I could look all round the dining-room—I did not see any furniture in it*—I could look into the window and see the fire go all round the room—*if there had been a bedstead or swing glass, or any thing of that kind, I must have seen it—I saw no wardrobe there—if there had been any there, I must have seen it*—when we had broke open the front shop it was full of fire, the stair case was burnt down.

Q. What quantity of furniture could you see in the front shop?

A. A chest of drawers, nothing else—I pulled the chest of drawers out, it was unfinished, because there were no drawers in it, and some of the veneer hung loose—in making a snatch at it with my hand, I found there was no drawer in the bottom—I saw no other furniture in the shop—I went away directly;

I got the chest of drawers out; I saw I could do no more good, and I run for an engine—the engine was brought as quick as possible—they had partly got out St. Michael's engine, and I helped pull it up—we got to the fire with it before three, a good bit, but how much I cannot say—*the roof was down before we came back—it fell down just as we came by the Catherine Wheel**—I remained at the house till 7 o'clock in the morning—we got St. Michael's engine into Temple's yard, and I put the pipe over the roof of the stable.

[In the yard behind the Bladud Inn, and belonging to it, are some stables rented by Mr. Temple.]

I never examined the state of the premises after the fire—*when Leworthy first came to the window he didn't seem any disturbed—when he came the second time, and slid down the plank, he did not appear to be distressed*—he sat on the plank some small space of time before he slipped off—after he had got down, I don't recollect that he said any thing to me just directly—I had no conversation with him, till I met him in the day, by the White Lyon, *the same morning about* 11 *o'cloch*—he was coming down the market-place, and *he asked me if I would go and take a glass of gin and water*—it was between 10 and 11—when I went in and had the glass, he said he was a man ruined—this was at Marshall's, at the Crown—he

* The roof falling in so soon, makes it the more evident, that had the house been (as the Plaintiff's witnesses represent) full of furniture, much of it would have remained in the ruins, to tell its own story; but the contrary was the fact, no appearance of furniture could be discovered.

gave me a glass of gin and water there—*he said, if he could have recovered the money that was upon the chimney-piece, he would not mind—that he would sooner lose all his property than lose the money he had upon his chimney-piece—he said it was £80*, that he had preserved to pay a person a bill that he owed him on that day—he said it was on the mantle-piece in the dining-room, in a little box—that was the room in which I had seen him, where he opened the door—*if there had been £80 upon the mantle-piece of that room, he could have saved it, or £5000 if it had been there*—there was no fire in the room when I first saw him, no fire at all, nothing but a smother of smoke—I did not hear Leworthy say any thing else at the Crown—I came away and left him—I remember being at the George a week or more after this; it was in the same month—Leworthy was there—*he said he should obligate me to go to London*—he did believe I must go to London—he could not get his money, he said—Plaintiff said nothing at the George about who was in the house at the time of the fire, nor at any time; *he told me, at the Crown, in the market-place, that there had not been any fire in his house for 3 days*; that was the morning following, when he talked about the £80, and gave me a glass of gin and water—he said nothing else then to my remembrance—the week following, one night, when I was watchman, a man came and asked me if I could get him a lodging; he said he came out of Devonshire, and had been into Wiltshire for some dogs for a gentleman; I took him first to Davis's at the Catherine Wheel, but they could not give him any lodging there; then I took him to the George, where he got a lodging—

Leworthy was there; he came out of the parlour while I was drinking a pint of beer that the man gave me, and said to me, wern't you the watchman when my house was on fire—I told him I was; says he, I shall oblige you to go to London, for I cannot recover my money—I asked him who was to pay me? he said he would pay me himself—he called to speak to me at Mr. Stothert's—that was before Christmas, and after the conversation they had at the George—I was at work in the shop, and Mr. Stothert's clerk came and told me I must put on my cloaths, and go with some person that wanted me—*when I came into the shop I found it was Leworthy; he told me I must go along with him*—I went with him—I went as far as opposite Mr. Fuller's shops, in King's mead Street; I asked him where we were going?—he told me he was going to Mr. Smith's, 46, New King Street, at the fire office; I asked him what he was going about? *says he, I have given in my affidavit for the loss that happened at the fire; and he says, I want for you to stand my friend—what is that, says I, Mr. Leworthy? he said to testify before the Gentlemen, that I was burnt out of my house naked—says I, how can I say that, when you do know better yourself—he said that would not make any difference; if you will testify it I shall recover £700—I told him I could not say any such thing,* for the sake of him, nor my own father—I told him I could not be of any service to him, and I had better not go—I told him, if he could get his money without me it would be better; but I could say no such thing—that was the conversation that passed—*at this time he had got on the same hat and coat as he had on at the time of the fire*—the coat he threw

out of the window to me he had got on then—I never had any conversation with him, as to the manner in which the fire happened—I never heard him say, except that he believed it was with the cat—he said he didn't know how it took fire, except the cat had carried the fire there—this was the same day at the Crown.

Cross-examined by Mr. Jekyll.

I never in my life knew any thing of Leworthy before the fire; I had been watchman upon that post nearly 2 years. The Plaintiff's house wasn't upon my ground; my stand was the adjoining one to that—I never knew him—he gave me a glass of gin and water, I was so cold in the night, and my cloaths were froze to my back—he gave me but one glass of gin and water at the George.

Q. And at the Crown you had no glass of gin and water?

A. I had a glass of gin and water at the George; I made a mistake of the George for the Crown—I never was in the Plaintiff's house in my life—I do not know that there were 2 doors which opened into the front dining-room—I mean to have it understood that, when I was upon the wall, I could look through the windows of the first floor—the house was sufficiently low for that; and in the house adjoining to that, any person can stand upon the wall now, and look round the dining-room with a good light in it—when I first saw Leworthy at the window, there was no fire in the room—when Plaintiff threw the window up there was no fire at all—the window was put down again.

Q. You remained looking in at the window?

A. I wasn't upon the wall at that time, not till after I threw up the plank; I had never been upon the wall till I put the plank up—there was no door opened till after I got upon the wall—I cannot say whether it was a door upon the stair case, or a door of the back-dining room that was opened—I was very much alarmed—I thought there were families in the house—I cannot swear that Leworthy's stockings were tied, or the knees of his breeches buttoned; *but I perceived no negligence at all—I am certain that his legs were covered.*

Q. Who was present at the time Leworthy opened the window?

A. There was no person in the street but myself, without it was Mr. Lewis; he came out naked and returned back into his apartment again—Lewis was taking the things out of his house, while Plaintiff was sliding down—there was no person present but myself when the shop door was broke open: it was full of fire and smoke—the chest of drawers stood in front at my right hand, and I tried to pull it out with my left hand, but the fire came so strong against me, that I was obliged to drop behind the drawers, and in that posture I pulled them out.

Q. Where were you placed at the time you first saw the fire at the back of the building?

A. At Cornwall house: it is in Walcot Street.

Q. What is the distance between the dwelling house and the workshop behind?

A. I never measured the ground, I cannot exactly say; I was never in the yard in my life.

Q. At the time you saw the back building on fire, could you see the back of the house at all?

A. I could not, the light was at some distance from the house; I could see the fire, but I could not see the walls; the height of the slaughter houses prevented me, and I thought at first it had come from the stabling.

One of the Jury. Q. You have told us, that you saw the fire come out from above the joints of the window shutters below, and also out of the attic; from what part of the attic did the fire come?

A. Every part was on fire; all the roof was on fire; the fire came from all the three windows of the attic.

Juryman. *Still there was no fire in the middle; I mean in the dining-room, which was above the shop, and under the attic* *?

Mr. Baron Graham. That is so—certainly

John Wiltshire, Esq. *Examined again by* Mr. Burrough.

Witness. I heard on the day of the fire of the loss which Leworthy had sustained, in consequence of that, I went to Mr. Linnell's, and sent for Leworthy—I was raising a subscription for him;

---

* It is very satisfactory to those who first suspected the honesty of this transaction, to find, that the suspicious circumstance related by the witness, made the same impression upon the very intelligent Jury it had previously done upon them—the fact of the *upper and lower floors being completely burning, and yet the middle floor* (the dining-room) free from fire, is only to be accounted for, by believing that the upper rooms were wilfully set on fire.

but hearing that this fire had not happened by accident (it being so reported) I went to make enquiry —Linnell called him in— I requested him to inform me of the circumstances of the fire—I asked him if he knew what had occasioned it? he gave me this account, *that he had been at work in his own house till 9 o'clock, and he then raked the fire out of the grate*—(he did not tell me what room the grate was in) *that he put out the candle, and left his house and went to a pork-shop in Cheap Street; I believe he said Shum's shop; of that I am not positive—however it was a pork-shop, where he purchased some pork for his supper; that he then went to a public house, the sign of which I don't recollect, where he supped and remained till near 12 o'clock; that he then returned home, and the moon was so bright, that he did not go to a neighbour's to light a candle, as he had been accustomed, but entered his house without a light; and went to bed, not smelling nor suspecting any fire; that the only probable cause that he could assign for the fire, was this: that a cat of his was accustomed to lie on the cinders to warm herself; and he thought a coal might have fallen on her back, and she might have carried it among the shavings, and so set fire to the house* *. Then followed the words which I have spoken to before—*after this he said the cat had been seen with her back singed; that she was missing, and he supposed she was burnt*—I believe he didn't mention any name, as of the person who had seen the cat—*I then asked him* very quickly, *if he was insured? and he answered* unhesitatingly, *not for one*

---

* To Winter, the watchman, Leworthy said there had been no fire in his house for 3 days preceding the fire.

shilling—I did not communicate any thing to him about the intended subscription—I did not tell him why I came to make the inquiry, and had no further conversation with him—*I had collected some money and I returned it.*

Mr. Serjeant Lens. That was not a fact which ought to affect us one way or the other, and therefore ought not to be have been mentioned.*

Mr. Thomas Linnell *examined again by* Mr. Moore.

Witness. I was present at the conversation which Mr. Wiltshire has been speaking of—I did not particularly know this cat of Leworthy's—*we found a cat upon the premises after the fire, which we always supposed was his cat, and which was neither burnt nor singed*—I cannot say positively that it was his cat.

Q. Has Mr. Wiltshire related accurately the conversation which passed on the occasion alluded to?

Mr. Serjeant Pell. No doubt about that.

Witness. I remember the night of the fire—I had gone to bed before the alarm of fire was heard at my house—the first thing I heard was my maid calling me.

[The witness explained by the model the relative situation of Leworthy's house and his own.]

---

* The fact was properly mentioned, and it was left to others to draw their own inference, what could have induced Mr. Wiltshire, (whose whole motive from the beginning to the end was humanity) to withdraw himself from further interference in Leworthy's favour: this it will be recollected was long prior to any measures being taken by the Globe Company to investigate the transaction.

My house fronts the street, in the same manner as Leworthy's; the back front runs about 9 feet further back than his—beyond my house, and adjoining to it, there is a small green-house, and next to the green-house is a low part of my brewery—there is no yard between the green-house and the brewery—the lower part of the brewery did not overlook the Plaintiff's yard; because his workshop, which joined the brewery on that side, was built two foot higher—below Plaintiff's workshop the Bladud Inn stables, adjoining the brewery—those stables are at the back of the workshop—when I was first alarmed in the night by the cry of *fire*, I got up and went round to the street door, and when I looked out at the street door, I saw the flames of fire come out at the window of what they used for a shop (their front shop)—I don't recollect seeing flames come out of any other window of the house at that time; for I run back again to my own room to desire my wife to dress—my bed-room is a back room—the windows of it look over the green-house, into the yard and workshop of Leworthy—I cannot see the dwelling-house from my room—upon returning to my room, I looked out at the window upon Plaintiff's workshop—*the fire was then coming out of the workshop under the steps just like an oven—there are a few wooden steps that rise from the pavement to the workshop, from under which I saw the flames coming out*—then I went a second time to the front of the dwelling-house—there was very little wind that night—*we burnt candles all along the wall in the open air down to the river*, that the people might see to

bring water; they were placed in a rank to hand the buckets from one to another—there was a little wind, no great deal—it was a starlight night—I don't recollect there was any moon—they were *candles without lanthorns* to light the people in bringing water to the engine.

Q. Then nearly at the same time when you saw the fire come out of the front shop, you saw it coming out also from the bottom of the workshop?

A. When I went back to my room again, I saw it come out of the bottom of the workshop; the steps were not burnt away even at last; they were merely burnt on the inside.

Q. *Not that side next the dwelling-house?*

A. *Not at all.*

Q. From the appearance of the fire in the dwelling-house and the fire in the workshop, *did it appear to you there was any communication between the two fires?*

A. *I don't think there was.*

Q. Mr. Baron Graham.—You did not see any communication?

A. *No, my Lord, I saw none.* What wind there was, was rather east by north—I rather think it was that way—I only judge from the fire which came out in front—it was driven the opposite way toward my house, and therefore could not have communicated from the house to the workshop.

Cross-examined by Mr. Serjeant Pell.

Witness.—I was in bed when the alarm of fire was first given, and was much alarmed on finding there was a fire next door—when I ran down to the

front of the house, I was not dressed; for I wanted one stocking—on returning to my own room, I could not from thence see the back part of Leworthy's dwelling-house—at this time I had a family in the house, and many more people besides—my attention was very much directed towards their safety—on returning into my room, I went directly to the window—I desired my wife to get up, and then went immediately to the window—I might be there till my wife was dressed, no longer—I did not continue there all the time she was dressing—I went to alarm Mr. Hurcombe, a gentleman from London, who slept in the front of the house—I was at the window a very short time—I was not then so much alarmed—I had been very much alarmed—I know Leworthy's building very well—the front house was built of stone—the back shop was built of timber—the front of the workshop was all window; partly of glass, and partly of oiled paper—in the yard between the house and the workshop, *there were shavings found after the snow went away, which were not burnt—it snowed all the day after the fire—there had been no snow before that*—the part of the workshop that was burnt, burnt very rapidly; but it was not all burnt—I remember the engines coming—neither of the engines had come before I went down to the front of the premises—they came afterwards—I do not know that I was there when the people came and said, the fire is catching the back shop—I do not know that any thing of the sort was said—I saw Parsons, the fireman, there; and went to him myself, and told him

the shop was on fire behind—the first engine was come then, and in front of the house.

Q. You were at the fire at a time when some one else said that the back building was catching fire?

A. I don't know that I could be there—I was getting my goods out for an hour or two—I don't know that any person said so.

Q. You say you were agitated or alarmed a little; but have you never expressed yourself as having been very much alarmed during the fire?

A. I was very much alarmed.

Q. So much alarmed as not to know whether you stood upon your head or your heels?

A. I was not so much alarmed as that, or I could not have taken my goods out—the front of the house is now entirely new built—the whole building is not entirely new; the back wall stands as it was—the door of the front shop was broken open before I came down.

Re-examined by Mr. Moore.

Witness. The wall of the house next the street fell down—the old back wall is now standing—the first time that I looked out at the window, *I saw the fire come out of the workshop from under the steps*—the fire did not come out of the long window of the workshop, but from below—I saw no shavings in the yard at the time the fire was burning; but after the fire, I saw some that were not burnt, when the snow went off.

Henry Cove *Sworn. Examined by* Mr. Gaselee.

Witness. I was servant to Mr. Linnell at the

time of the fire—I came to assist, in the first place, in helping to get my master's goods out of his bed-room: and, while we were getting them out, there came a great light to the window—that was the time when the roof of the back shop fell in—some of the rafters fell against the corner of the green-house which came against the end of the workshop—there was a gentleman lodging in the house of the name of Hurcombe—I went to the window, and saw there two rafters burning—I said to this gentleman, don't this look very dangerous?—this was my master's bed-room window, where the rafters were right under, at the back of master's dwelling-house—I went down stairs, took a chair from the parlour, got over the privy and threw those rafters down—I got upon the wall, and went along the main beam that reached from master's wall to the other wall, right across the yard—after I got into the yard, I threw all the rafters off the beam; I then got down into the yard, and went in under the shed and brought out a wooden partition that was lying against the wall—I didn't see Leworthy at that time, I didn't see him till after he came upon the stable roof—I had then got upon the wall to return—*he was guiding the pipe of the engine against the dead wall of the brewery*—I did not observe who it was at first, but when I did observe I called out "Leworthy, don't waste the water, throw "it where it is wanted," with that he made answer "damn it, or damn me, what is the use of throwing "the water into the main body of the fire?"—I said to him, then throw it against either of the dwelling-houses, for there is no danger of fire here; with

that, *I no sooner spoke before the water came right against my breast from the engine*—I shifted myself round, turning my back to it, and, I found I could not escape it, and was likely to have a fall; and, had I not got instantly from it, I must have been washed off into Leworthy's yard—*Leworthy had the direction of the pipe at this time and directed it against me*—I was then just on the wall where the beam went across from one side of the yard to the other, [the wall next to Linnell's]—I was in a situation from which I could see both the dwelling-house and the workshop—Mr. Hurcombe at this time was in my master's bed-room looking out of the window directing me—when I saw the fire it was burning the north end [the end furthest from Linnell's] of the workshop, and I found part of that end had fell in.

Q. Was it burning perpendicularly, or athwart wise?

A. Right up the end of the rafters, the ends of the rafters were all burnt away—the fire was burning in the dwelling house right up, on both sides—*they were two separate fires by what I could perceive of it*—there was very little wind at this time—*I fixed naked candles on the wall myself*, to give light to enable the people to bring water from the river.

Cross-examined by Mr. Dampier.

Witness. The candles were not fixed upon the wall by the workshop, but on the wall down the lane that leads to the river.

Q. You describe these three places, the workshop, and the front and back of the dwelling-house as

burning at once, now had they not been burning a considerable time?

A. Yes, it had.

Mr. Baron Graham. Q. You say the fire had been burning in three places?

A. No, my Lord, two—*the fire in the dwelling-house was quite one fire then; there was another fire in the back workshop*; that is all that I know of.

Mr. Joseph Hurcombe *Sworn. Examined by* Mr. Moore.

Witness. I live in London—I was at Mr. Linnell's in Bath, in ill health at the time of the fire—I was disturbed by the fire breaking out and got up—I gave the first alarm in Linnell's house—after some time I went into Mr. Linnell's bed-room—this was toward 3 o'clock—in Mr. Linnell's bed-room I could see Leworthy's back shop and part of the yard, between that shop and the house—the rest of the yard I could not see, because Linnell's house projected further back than Leworthy's—part of the roof of the workshop (one end of it) had fallen in when I first saw it—the beam which stretched across the yard, with one end resting on the wall immediately below Linnell's green-house, was then partly on fire—I directed Cove, the last witness, to get some kind of instrument to cut the beam away, in order to prevent its communicating with the green-house, which I thought might happen—this Cove did—I was looking at this time out of Linnell's window, giving these directions to Cove, *and the person who had the direction of the engine pipe appeared to me to be*

throwing the water at me and Cove while I was giving those directions—the water came against me as I stood at the window, at first above me, but apparently directed against me; afterward upon me, and I was obliged to shut the window—witness did not then know who it was had the direction of the engine pipe.

Q. Did you afterward see that person whoever he was do any thing to Cove?

A. Nothing more than throwing the water upon Cove and me; I saw that the water must naturally come upon him, for he was just under me—I said what a rascal that fellow must be to play upon those who are assisting him.

Q. Did the water come directly upon Cove, or did it only fall upon him from above?

A. He was under me, and the water coming upon me I was obliged to shut the window—before I had shut down the window, I desired Cove to call out to the person so directing the pipe not to throw the water in that useless way against the house, where there was not the least necessity; I said he must be a great rascal who had the pipe in his hand *.

WITNESS. I cannot speak to any communication of the fires—I was very poorly, and the water being directed toward me, prevented my taking sufficient notice—the roof of the workshop had fallen in before I looked out at the window—*I think the fire did not communicate from the dwelling-house to the workshop,*

---

* As Linnell's house projected 9 or 10 feet beyond Leworthy's at the back, with no window or other communication of that sort on the side toward Leworthy's, there could not be the smallest utility in throwing the water in this direction.

because when I first alarmed the family of Mr. Linnell, the light came in at my window, which was in front—I observed nothing more than I have stated.

ABRAHAM SNELLING *Sworn. Examined by* MR. GASELEE.

WITNESS. I am a plasterer and tiler—I lived in the adjoining house to Leworthy's, the same house as Mrs. Lewis lives in. I was alarmed by the fire about half past two—I went to my bed-room window: I lifted up the window immediately, and I saw the fire come out of Leworthy's window to the full extent of it: it was the window in the back dining-room—the full extent of the workshop was on fire when I saw it, both above and below—I saw Leworthy the very next morning about half past 9, at the house where I was at work, a quarter of a mile distant from the same place—I asked him, how did this fire happen? he immediately said, *he rather thought some person had played the rogue with his cat, and tied something to his tail; or otherwise it must have come down the chimney and got among the shavings.*

MR. ROBERT SAXTY *examined again by* MR. MOORE.

WITNESS. On the morning of the fire I had a conversation with Leworthy about where he was the evening before: he told me that he was on Monday, the evening of the fire, at the Crown in the Market-place, at a house kept by a man of the name of Marshall; that he supped there with an acquaintance whose name was Woodward; that after they had done, and when he was going to leave, which was a little before 12, *he said to the landlord, I have no*

candle in the house, and asked him to sell him a candle, and he said he gave him 1½*d.* for a candle; that he went home immediately perfectly sober—*when he came home his fire was out, and his neighbours were gone to bed; that he did not light the candle, but put it down and went to bed in the dark.* The next day I went to the Crown, and asked the man all the particulars.

Mr. Moore. You must not tell us what passed between you and the landlord. My learned friend (Mr. Serjeant Lens) may ask you if he chooses.

Witness. I went to the Crown, and the man shewed me the pound of candles which he said he took the candle from—I went on purpose to ask the question—after the fire I went upon the premises into the yard; I had a labouring man with me—I looked about the yard particularly; *I saw there had been some fire* along the north wall *under the floor of the workshop*; I could discover very clearly that there had been fire all along under that wall, which had scorched the shop floor a good deal; but *the shop floor had not been burnt through in any part.* I looked about likewise to see if there had been any timber burnt—I am speaking of the internal part of the wall of the shed under the shop where he kept his timber—the wall extended below the floor of the workshop, and *it was on the inside of this part of the wall that I observed the mark of fire,* it appeared to me as if there had been shavings light there—the step ladder that led up to the workshop was burnt *only on the side next the workshop*—there was but one board in the yard—on pulling out a post that supported some planks, which formed a saw-pit, *a*

candle was found under the saw-dust in the yard, between the dwelling-house and the workshop near about the centre.

Mr. Baron Graham. Q. You say you pulled out a post?

Witness. We pulled out a post, my Lord, *and the remains of a candle appeared*:—the Plaintiff had no hole dug for the saw-pit, therefore he formed it above ground—*the candle was melted down a good deal upon the sides and very much smoked, as if it had been carried about in a hurry*—I think the candle might be of about 10 to a pound; but *it struck me as being of the same size with the remainder of the pound of candles that the landlord shewed me*—I do not know what is become of the then landlord of the Crown; he has left Bath for some time—the morning the fire happened I asked the Plaintiff what room he slept in? he told me, that *he slept in the back room up one pair of stairs*, and that he was waked by the fire burning through the wainscot of the room that he slept in; and that the fire had come up stairs and caught his wainscot—I asked him how he came out? he said he threw his coat over his head and came through the fire into the dining-room: he was obliged to do that, for he could come no other way, *without any other clothes on but his coat over his head*, and *that he brought his clothes with him, and sat upon the sill of the dining-room window with his feet out at the window, and there he drew on his breeches and stockings*—I cannot exactly say that he said he brought his clothes with him: *this he said, that he put on his clothes at the dining-room window*; and he must have brought them there, or he could not have

done that—*there was a drip on the outside under the window, whereon he said he could rest his feet* *.

JOHN VASEY *Sworn. Examined by* MR. GASELEE.

WITNESS. I am a tallow chandler—I live at Bath, and had a conversation with Leworthy the week after the fire—I asked him whether he could tell me how it happened, he said he could not; he said he knew no more about it than what I did myself; he said he was late at the Crown the night before it happened, he had a candle at the Crown, *and he lighted it going home at the George, in Wálcot Street* †; he went home and went up stairs to bed; he took great pains to put the candle out before he got into bed.

JOHN HAMLET *Sworn. Examined by* MR. MOORE.

WITNESS. In the month of August before the fire I purchased of Leworthy a four-post bedstead and curtains, and furniture to it; it was not all delivered; all except one curtain, one of the small ones; I received it after the fire—the rest was delivered before the fire—I paid him for part before the fire—£15 13*s.* 1*d.* remained due—after the fire I saw Leworthy and conversed with him—I met him, and I told him I was sorry to hear of his misfortune, and

---

* It was proved by *Winter*, that Leworthy came to the window dressed, and so far from his being in the situation he described to *Mr. Saxty*, he coolly went back to the same room from which he pretends to have escaped with difficulty.

† To several other respectable witnesses Leworthy said *he did not light the candle at all.*

I supposed I was a sufferer as well as himself—I had not then received the curtain—[Witness considered himself liable to be charged with the curtain, though it had not been delivered]—*Leworthy said, O no, I carried it* [the curtain] with some other things, *the day before the fire* to a public-house; and, to the best of my recollection, he said *to the George—I afterwards got the curtain* *—I paid him his bill, but not then, some time afterwards.

MR. THOMAS LEWIS *Sworn. Examined by* MR. GASELEE.

WITNESS. I am a builder—I went to the premises about 3 weeks after the fire to survey them—at that time the back wall of the dwelling-house was standing, and part of the front wall—the roof of the workshop was entirely burnt, some few of the rafters were scattered about, it was all down—the floor was burnt a little, no great deal—the outside of the back wall of the dwelling-house was not at all burnt—there might be some little effect of the smoke on those parts which were near the windows in the upper stories—the back attic and dining-room some little impression—the front of the workshop toward the dwelling-house was of wood; the beam, which carried the front of the workshop, and supported the floor in front, was standing, and was burnt *very little*

* On the part of Leworthy it was not attempted to account for a circumstance so very suspicious as carrying out things the day before the fire, which were afterwards to enable him to recover debts; if he did not anticipate the fire, why were they more safe at a public house than in his own?

on the outside, but very materially on the inside, and at one end—that beam rested on the two side walls of the yard, and divided the small building into an upper and a lower shop [what the other witnesses call the workshop and the shed] the front of the upper shop and the roof above it were entirely gone —there were uprights standing which supported the pieces of timber that formed the saw-pit—there was nothing standing above the shop floor—the wooden steps that led up to the workshop were a good deal burnt *toward the workshop; on the outside toward the dwelling-house not at all*—there is a pump in the yard about 3 feet from the foot of the steps—*that* had a wooden stand to it, as pumps usually have, *which was not the least burnt*—the side strake of the saw-pit [the horizontal beam which being supported by the uprights formed the side of the saw-pit toward the dwelling-house, the other side being formed by the beam which stretched across the yard and carried the upper shop] was standing; that was much burnt *on the side toward the workshop, but not the least on the edge toward the dwelling-house*—the pump stood nearer to the steps than the saw-pit—the side strake of the saw-pit is 3 feet 2 inches from the beam, which supported the front of the upper shop, and the pump is 7 feet from that beam—the pump and steps were in a line with one another, close to the north wall—at the back of the dwelling-house there is a privy—*that was not the least injured,* nor did I observe the smallest impression of fire upon it; the door was perfect and the roof was perfect—this privy projected 4½ feet toward the workshop, the door of it fronting the workshop—the windows in the back of the house

above the lower or kitchen floor were all destroyed—in the lower floor, which is on a level with the court yard, I found two doors and one window; on one side is a passage door; on the other the back kitchen door, with the window between; *those doors and the window were not burnt through on the outside*, they were scorched, but I *did not observe that the fire had passed through them at all.*

Q. According to your judgement, if the fire had spread from the dwelling-house to the workshop, would or would not the outside of the saw-pit-beam and of the steps have been burnt?

Mr. Serjeant Pell. We object to the question: my friend is asking this gentleman a question of opinion as to the communication of the fire.

Mr. Baron Graham. To be sure, that is for the jury.

Q. From the observations which you made on the inside of this place, did any thing appear there to shew you where that fire originated?

A. I know very well that *one fire originated below the steps.*

Mr. Jekyll. You can only know that from hearsay:—you come here as a judge of the fire, though you were not on the premises till 3 weeks afterwards.

Q. Did you see any thing in the workshop from which you draw that conclusion?

A. In the lower shop, against the wall on the north side, and about 5 or 6 feet from the steps, I found the wall burnt very much; it was burnt white at the bottom, and black somewhat higher up, *as if a fire had been lighted in that particular place*, partially

lighted, for *I am clear there must have been a fire partially lighted there*, in that particular place, or else it caught partially—that was not under the steps, but near to the steps; the fire had reached the steps and burnt them; and it had caught the end of a small inside or middle beam, which was very near over that spot; the end of it was burnt off; it had also caught the joist and flooring immediately above it—the floor was burnt a little, no great deal, and only at that end.

MR. WILLIAM BALLY *Sworn. Examined by* MR. MOORE.

WITNESS. I was a Churchwarden of the parish of St. Michael's in Bath when this fire happened, the same parish in which Leworthy's house was situated —after the fire Leworthy made application to me, as Churchwarden, for a certificate to enable him to recover—Leworthy applied in person—I do not know whether he applied to the other Churchwarden—*that certificate was not granted by me*—the application was made in May 1808.

Q. Tell us what passed on the occasion when Leworthy applied to you?

A. Leworthy called at my house and produced a written paper, not signed; which, upon opening, I found purported to be a certificate from the minister and churchwardens and reputable householders of the parish in which the fire happened—upon seeing it to be a blank certificate, I folded it up, and told him I certainly was not sufficiently acquainted with his circumstances and character to allow me to sign such a certificate at that moment; but if he would attend at the poor-house on a subsequent day, where a

committee of respectable householders attend to do the parish business, I would desire them to be present on that day to hear what he had to say, and also any evidence that he could bring forward in support of his claim—*that meeting was held; Leworthy attended, and was very patiently heard, and all his evidence—the result was, that the certificate was not signed.*

Mr. Burrough. My Lord, that is my case on behalf of the Company.

REPLY.

Mr. Serjeant Lens, in a very eloquent and judicious reply, endeavoured to shew, from the evidence, that the Plaintiff's property in the house at the time of the fire was of a value equal to the sum claimed under his insurance, and he argued from thence that the Plaintiff could have no motive to set fire to his premises, since he would get no more by his insurance than his goods would have produced him.

THE CHARGE.

Mr. Baron Graham.—Gentlemen of the Jury—This is an action brought by the Plaintiff, William Leworthy, against the Defendants, Frederick Molling and James Taddy—It is in the shape of an action of covenant against the two Defendants as representatives of the Globe Insurance Company, and the short substance of this declaration is, what you are now perfectly well acquainted with. The Plaintiff states his right under an indenture bearing date the 25th of December 1805, reciting the obligation of these parties to cover the event which has taken place, and which has given rise to this action. He states that, up to the 8th day of December 1807, he had regularly paid the premium; that, upon that day, a fire happened, which destroyed the premises insured, to his the Plaintiff's loss, of the amount therein mentioned; and, that in virtue of this indenture, Defendants had pledged themselves to make up that loss, which they had not done. Then there are several pleas put in to this declaration that bring the question very shortly before you. The Defendants plead,

in the first place, that the Plaintiff did not deliver in as particular an account of his loss as the nature of the case admitted of. I shall not dwell on that plea; for, from the turn the case has taken, it is of no kind of moment; but the second plea is the substantial plea that you have to try, viz. *that in the account delivered in by the Plaintiff there was fraud*; and, that in truth and fact the loss actually sustained by him was not above £300. Then there is another mode of stating the fraud, viz. *that he made a false affidavit*, having sworn that the account which he delivered in was true, whereas he well knew it to be false. The fourth plea denies that the Company dispensed with the certificate of the minister and churchwardens; and last of all comes a most material plea, viz. *that the premises in the declaration mentioned were fraudulently set on fire, damaged and destroyed by the Plaintiff with intent to defraud the Defendants and the said Company*. The Plaintiff has replied to all these different pleas, putting them all in issue. The first plea which is the subject for your consideration is the plea arising from the denial on the part of the Defendants, that the Company dispensed with the Plaintiff's producing such a certificate as is required by the policy. And, to shorten the matter, I put the second and third pleas entirely together, as amounting substantially to this, that the Plaintiff had made a fraudulent representation of his loss greatly exceeding the real extent of it; consequently, that will be a second question for you to try. And, no doubt, the grand question for you to try is, whether there is evidence before you to satisfy you that the

Plaintiff did really set fire to these premises. Now, however unwilling I may be to take up your time and exhaust your patience by a detailed recital of this great body of testimony, yet, feeling as I do the very great importance of this cause to the parties on both sides, I know not how to dispense with the fatigue, great as it must be to all of us, of reading over the whole of the evidence; taking care however, as I go along, to use the utmost dispatch which the nature of the thing will admit of; and in attending to the subject we shall find that we may take our stations from different parts of the evidence, as it branches itself into different sections; and that having so done, the first point may be disposed of in a very few words. With respect to the second question, *whether this man made a fraudulent representation of his loss greatly beyond its true extent; and next, whether in fraud of the Defendants wilfully set his premises on fire, it will be your duty to decide upon, both as a civil jury and as a jury sitting on the Crown-side upon a question of criminal jurisdiction.* Having made that observation, I think we shall get over the first stage of our business without much trouble; and that is the question, whether the Defendants, or the Globe Insurance Company, have on the present occasion dispensed with the production of that certificate which is required by the terms of the policy. For the sake of shortening the matter, I shall not read the evidence upon this part of the case in the precise words: but it appears, by the testimony of Mr. Arnot, that the production of that certificate was a condition lately introduced, and he cannot say whether it was in the Plaintiff's policy or not. That con-

dition, however, does specify a certificate of a very precise nature, requiring that it shall be signed by the Minister, Churchwardens, and some reputable house-holders of the parish in which the party lives, who shall bear testimony to his character, and who, from knowing his character, are to declare their belief that the representation which such person makes of his loss is a true one: *and a very proper condition that is, because the Minister and Churchwardens are the persons most likely to know what is the character of the party.* Now, when I say that it is very wise and prudent on the part of the Defendants, that such should be the general course of their proceedings in respect to the claims which are made upon them, I cannot help stating to you, that, when we consider the circumstances which have taken place in this case, when we find that the only certificate which has been given in is this:

"I hereby certify, that the above statement
"does not appear to be unfair.

(Signed) "J. Crosse, Clerk.
"Joseph Woodward, house-keeper.
"Jos. Roberts, Westgate Street.
"A. Clement, Broad Street."

This, to be sure, has no appearance of a certificate at all; there never could have been any thing more trifling than this certificate, which, on the face of it, appears to be signed by *J. Crosse, Clerk,* not stated to be signed by the Minister of the parish in the usual form, and by three other persons, not one of whom pretends to stile himself Churchwarden; neither in the signatures nor in the substance does this paper

bear the least resemblance to the certificate which by the terms of the insurance is required; and the plainer the difference was, the more plainly it must have struck the Defendants, and the more doubtful it must have appeared to them. Yet the thing is received; this man may have been at one time a respectable tradesman; they thought perhaps he had not attended to the directions. It passes from one Committee to another, the first Committee expresses no dissent, or makes no enquiry, and then it goes to the Committee of accounts, and afterwards to a third Committee, where the matter passes as of course. When it has passed all these Committees, we find these Gentlemen so far satisfied with it as to say in effect here is no regular certificate, but it does not signify, we require it in general, but it does not signify in this particular instance; they pass *this* certificate, and a very short time after the affair going to the consideration of the Committees, the bank-post bill to the amount of this man's claim is sent down. It is a thing required for their own benefit, and they may or may not dispense with it as they think fit. Still it may be taking too much upon me to say that they have done so; and, *it will be for you to consider whether they have waived it, or whether there are circumstances of fraud attending the certificate that was produced, which reinstate them in the right to insist upon a certificate signed by the Minister and Churchwardens of the parish* in which the Plaintiff lived.

Then, Gentlemen, we come to the most important part of the case, the misrepresentation with respect to the value of the goods destroyed, for the issue is

upon a *fraudulent* representation; therefore, if upon the present occasion, the real value should appear to be *some what* short of the amount that is claimed; if it should be £50 short, or £100 or even £150, if the mistake should be such as a man might make from the very circumstance of losing all his effects, you would not perhaps convict the Plaintiff of a fraud. But, if you should be of opinion upon the whole of this evidence, *that the Plaintiff's furniture was not worth £400, for instance,* a sum greatly below the account which he sent up to the office, *then to be sure you will be justified in saying that he made a fraudulent representation.* The first witness on this part of the case is David Arnot.

[*His Lordship here recited the whole of the evidence for the Plaintiff*] upon Mr. Crosse's evidence he observed. *This is a remarkable statement when compared with the evidence for the Defendants.* "He "thinks the room was fuller of goods at this time "than ever it had been before;" and upon the question which arose as to the delivery of papers by Mr. Crosse to Mr. Saxty, his Lordship observed; "Mr. "Crosse does not remember having delivered such "papers, but he says he does not positively deny it; "so far Mr. Crosse is a fair witness." In respect to the feathers, he only cast a casual eye over them, as he looked in at the door of the room in which they were deposited. He has given you his valuation of the quantity of stock in the different parts of the house; but if we were to add those sums together, they would fall very short of £745. Still, Mr. Crosse does not affect to give any thing more than

a general idea of its value, and upon such a subject it will not be expected of course that he should be able to speak with precision. [After reading the evidence of Sartine his Lordship continued]

I will pass over the remaining evidence of his conduct at the fire, because it appears unquestionably, as far as the evidence upon the part of the Plaintiff goes, and, if that were to be believed, that his conduct was perfectly unexceptionable during the fire. It is said he assisted to play the engine as well as he could, and did every thing to arrest the progress of the fire. There is only this one circumstance to be observed here, which is, *that these witnesses speak to nothing in the first instance of a fire at the back part of the house, they speak only to the fire in the front of the house*; it was after being some time there that they were told of a fire in the back part. And then Humphries, the fireman, tells you, the Plaintiff in his exertion to stop the fire went upon the tiles, where he himself would not have gone,

This, Gentlemen, is the evidence on the part of the Plaintiff, and taking this evidence to be true, it does seem to me that for a case of this sort, where you cannot expect perfect and correct evidence, it is a reasonable body of evidence to satisfy you that this man's furniture was such as it has been represented to be. *At the same time, I do own I should be much more satisfied in a case like this, if this man really were, up to the time of the fire, the respectable tradesman that his witnesses represent,* having his stock increasing all this time. If that were true, *one would wish that some evidence had been brought forward of a nature that would put the thing out of doubt.* If

more new furniture was carried into these premises every day than at any period before, one might have expected that it was within his reach to have satisfied you *from whom he bought that new furniture*, or have made out by bills of parcels what this new furniture was; something of this nature one would imagine he might have done, *if there had been this influx of trade. I don't* mean to say, that he could shew himself to be a person in great trade, all the evidence precludes the idea of that; but in a case of this sort *such evidence would be much more satisfactory than the cursory view of these people in going round the premises*; and, in an action of this nature, where the character of the Plaintiff comes so much into question, *I am sorry to say that we are going into a case on the part of the Defendants, which represents the situation and condition of this man to be as much the reverse of what his witnesses have represented as can possibly be imagined*; at least so far as they have given any account of it. The first witness called by the Defendants is Mr. Samuel Bennett. [His Lordship recited the evidence given on the part of the Defendants.] Upon Mr. Bennett's evidence, the learned Judge observed, Mr. Bennett says, *the Plaintiff told him "he was very poor, and was somewhat involved;" that does not very well correspond with the accounts you have received from the Plaintiff's witnesses*; but it is always subject to the remark, that a man *may* have this stock of furniture, and yet feel himself poor. After reading Mr. Bennett's and Mr. Bartrum's evidence, his Lordship said—*It must strike you, Gentlemen, how very much this evidence differs from the statement of the witnesses on the part of the*

Plaintiff. Yet Mr. Bennett and Mr. Bartrum seem to be creditable people, there is therefore considerable difficulty in this case. Upon Green's evidence, his Lordship observed, Green worked constantly for the Plaintiff. You had another workman called by him of the name of Collyer, but Collyer it seems only worked for him occasionally. *In respect to the feathers, Green gives a direct contradiction, not only to his fellow workman, but also to Mr. Crosse; he says there were no feathers, and if there had been any, he must have been blind not to have seen them.* And as to Green's saying he would go 10 miles to see Leworthy hanged, probably you won't think much of that: it seems to have been merely an expression of anger from the circumstance of Leworthy's having been the cause of his being enrolled in the militia. [His Lordship proceeded with the evidence till he came to that of Mr. Else.]

Mr. Richard Else says, that, a short period subsequent to the Plaintiff's being ballotted for the militia, he attended before one or two deputy lieutenants of the county; this was only three days before the fire; and Mr. Else attests the fact, which fact you are to form your judgment upon; that, when so ballotted, he made an affidavit, the short substance of which is, *that he swears he has not property in goods, lands or money to the clear amount of £100.* Now that is not absolutely inconsistent with the idea of his being in the personal possession of goods to the amount of £745; he may have them in his business; and till they are legally taken out of it, he has a right to retain them, and a right to claim for the loss of them, in case they are destroyed by fire, upon any office in

which he has insured. All that the man swears, is, that he has not goods to the *clear* value of £100; that might be, for he may not be worth £100. Supposing him to recover this £745, it may only go to pay his debts, and nothing more; he might consistently with such an interest in the goods as I have described, say these goods are mine; suppose he had lent money upon them, and had not demanded payment of that money; in such a case as that he might fairly call the goods *his*, so as to be entitled to ask for an indemnification in consequence of their loss, though no part of the value of those goods might remain to him when he had paid his creditors. *But most unquestionably you have this evidence, that at this time of day he was not the substantial owner of a £100 worth of goods, which it is extremely difficult to reconcile with the accounts we have had of the affluence of this man*; though it is possible that he may have had something of an ostensible trade going on; but, because of these debts to the amount of £600 not coming regularly in to him, he might be reduced to great difficulties; this circumstance therefore cannot be considered *as at all decisive* of the case, one way or the other.

His Lordship continued to recite the evidence—Upon Mr. Linnell's evidence the learned Judge observed, Mr. Linnell says, that when he first knew the Plaintiff, he had a good deal of business, and describes his business as having slackened for the last 2 or 3 months before the fire; indeed, most of the witnesses agree that at one time this man was going on well; *and, perhaps, this may serve to reconcile the*

evidence of Mr. Crosse with the evidence of the Defendants' witnesses.

Upon that part of Mr. Nonmus's evidence, in which he speaks to his having sold a bag of glue for the plaintiff, his Lordship said, *that looks very odd, that a cabinet-maker and carpenter, not intending to leave off trade, should sell this article, an article of such material use to him, that he cannot stir a single step without it. This undoubtedly is a circumstance which tends very much to shew that the man was giving up his trade.*

Mary Cooling says, the house looked to her like *an empty house; and I cannot say, considering all the circumstances,* considering the disposal of this man's goods at these different auctions, *I cannot say that the woman does not speak the truth.*—His Lordship, having read to the conclusion of this branch of the evidence, as far as the evidence of Mary Lewis (inclusively) then continued:

I am sorry, Gentlemen, to have occupied so much of your time; but I cannot help thinking we are come now to that stage of the business when it may be very fair to take your opinion upon the case, *so far as respects the fraud and false swearing.* The other fact in question upon this record (I mean the wilful burning of the premises) seems to be of a very different kind indeed, and to afford ground for a different description of observations. Many observations are fair in a case of a civil nature, which ought not to be made when a man is tried for his life: therefore, if no objection is made to the course I propose, I shall for the present stop here, and take your opinion *on the question of the truth or falsehood of the Plaintiff's*

representation of the value of his property. And in respect to this question, I cannot help considering Mr. Arnot as a respectable man—I cannot help considering Mr. Crosse as a respectable man; and several others of the witnesses who have been called, on both sides, are also respectable. A great many who have been called on the part of the Plaintiff represent him as being at this time of day in a condition, not of considerable opulence, that they cannot do: *the man has told you he is poor; there is no doubt about that: his affidavit, 3 days before the fire, to take it in the weakest way, proves that he was a poor man.* But the evidence does then go strongly to shew that he had a thriving business; and, according to the evidence of Mr. Crosse, he seemed to be encreasing in his business. However, this is directly contradicted, and there is very often a way in which one would endeavour to reconcile opposing testimony, *and not say that people are absolutely perjured;* there is a *possibility* that Mr. Crosse and Mr. Arnot went there before the Plaintiff began to decline in his circumstances; and at the same time that they might, from want of sufficient opportunity, and from not being perfectly conversant with the nature of such a business, have over-rated the stock which they saw upon the Plaintiff's premises: *for it is a very difficult thing, most undoubtedly, to reconcile the idea of a man's carrying on a flourishing trade with these frequent applications to auctioneers to sell his goods for him, especially too when we find him unable to pay £10 to Mr. Willis; and he not only sells his goods by Mr. Bennett, but he sells them under the shew of selling* ALL HIS GOODS, *and of quitting that line of business.*

In the early part of 1807 you find him selling the whole by means of Mr. Bennett; then at subsequent times, in April and September, by Mr. Bartrum and Mr. Evill; and very near the time when the fire happened, within 3 weeks of it, he sends two chairmens' carriage loads of goods to another auctioneer, a Mr. Nonmus, to be sold. All this must have tended greatly to diminish the quantity of goods that was in his house. *If he sold these goods for the purpose of obtaining ready cash with a view to get new furniture in, I cannot satisfy my mind why he does not shew from whom he bought this furniture. Besides this, you find him endeavouring to borrow a shilling of a poor old woman the very night before this accident happened:* and here I cannot help touching upon another circumstance; he not only tries to borrow this single shilling, but you observe that his acquaintance, Mr. Linnell, who is lending him money from week to week, a guinea at a time, says, "*I could "never get my money back but by taking it out in "goods.*" And again, *this man*, who is said to have been possessed of a stock to such an amount, *submits to the disgrace of being rated as poor in the parish books.*—A very serious remark has been made by the Counsel for the Plaintiff, that in these times of distress and taxation, he says men are not to be considered as utterly ruined because they find themselves under difficulties in respect to the payment of their taxes. *God forbid they should! All people feel the weight, and the poor most especially: but what are we to think of a man who submits to be rated poor for* 16*s*?—*Sixteen shillings! can that be so great a burden upon him who has a stock of goods to the value of £*745?

At the same time it is for you to judge, and you will judge for yourselves. If you attach implicit credit to the evidence of the workman and the pawnbroker; if you believe Arnot, who had no particular reason for looking over this furniture; if you believe the evidence that has been given of this flourishing trade, in opposition to the wretched state of the Plaintiff as described by the Defendants' witnesses, his having no goods in his house, no fire, no bed; you will, in that case, find a Vedict for the Plaintiff.—*But if you believe the witnesses on the part of the Plaintiff may be mistaken; that very possibly Mr. Crosse may be mistaken*, who appears, indeed, on the late occasions to have seen but little of the house; he tells you, that he was at the door; and he says, with respect to the feathers, that he only put his head into the room—but the question is, whether you are of opinion that, at the time of the fire, this man had upon his premises goods to the amount of £745:—that sort of fair stock which he might reasonably state to be of that value; *you are not called upon to decide that it was of the actual value of £745; but if you really believe he was going on, and had the sort of stock which these gentlemen represent he had;* if you believe what one of his workmen, who was there only occasionally, said, in opposition to the man who was there constantly, the man who is now in the militia; then you will find that there was no fraud; and upon this part of the case your verdict will be for the Plaintiff to the amount of the damages as they are laid.—*But if you think the possession of such a stock is perfectly inconsistent with the extreme wretchedness of the Plaintiff's circumstances*, and you don't know

how to reconcile it; *if, from the evidence that has been laid before you, you think there was nothing in the house at this time to the amount of any thing like £745; in that case you will find a verdict for the Defendants.*

One of the Jury. Then, my Lord, we are not to take into consideration the evidence upon the fifth issue?

Mr. Baron Graham. No, sir. If your verdict should be found for the Defendant on the first four issues, perhaps I shall not have occasion to press the other; but if on those issues your verdict should be for the Plaintiff, I shall then have many important observations to make upon the subject of the last issue.

Foreman of the Jury. (After a very few minutes consultation) *our verdict is for the Defendants.*

Mr. Baron Graham. I feel in my own mind a very strong impression, that, whatever circumstances there are in the cause which produce a suspicion of this man's having committed the rash and desperate act of setting fire to his premises, with a view to defraud the Insurance Office; yet I really think, that I could not as a Judge, upon the sum and total bearing of this evidence, represent to you, where a man's character has to a degree at least been well spoken of, that you would be bound to find under the circumstances of the case that this man was actually guilty of that crime. For though I see some very singular circumstances in the conduct of this man; and more in the explanation which he himself gave of the circumstances of this transaction; and though I see that every account of his that has

been given with respect to the situation of the premises, and the manner of the fire's breaking out, is equally unsatisfactory; though I recollect and see enough to furnish ground for many observations, that might, if this man were tried for his life, make a very strong impression upon my mind; yet, I am of opinion, that it would arrive at last at this conclusion, that there still remained a degree of doubt. And when we consider the innumerable accidents that men placed in situations of this kind are liable to; when we consider that the man having got the candle, may have gone to bed in a stupor, drunk he certainly was not; but he may have left the candle in his workshop before he went to bed; he may have dropped a snuff without the smallest knowledge of it; when I see there is that possibility, and the want of positive proof, for the proof is to be collected only from the inconsistency of the man's conduct, and the absurdity of his accounts; at most, I can only go the length of suspicion: therefore, under these circumstances, without going through the evidence upon this part of the case, I think I am justified in saying, that you will do right to find a verdict for the Plaintiff upon the fifth issue.

One of the Jury. It is a very strong circumstance we have, in proof *of the fire having broken out in the two buildings at the same time, that the pump which was between them both should remain uninjured.*

Mr. Baron Graham. There is a difference of opinion with respect to the manner in which the fire commenced at the back of the premises; one of the witnesses saying it commenced by the wind rushing

through the door, and driving the fire toward the back part; and certainly when the door of the shop was broke open, the wind, whatever might be its direction without, must inevitably rush in toward the inflamed parts; the necessary consequence of which would be to drive the flame to the back and upper parts of the house.

Another of the Jury. I think it is in evidence, that in the back part of the house, in the workshop there was fire above the floor, and underneath it, but the floor itself was not burnt. Now it is impossible that there should be fire under the floor and above it, without the floor being burnt, *unless fire had been purposely set to the two places.*

Mr. Baron Graham. The evidence of the last witnesses, it is true, does go to shew that a fire had been originally lighted under the floor, because they represent the lower part of it as more burnt than the top part; and that the fire had not communicated to the top beam. But who can say what may be the effect of fire? Supposing a volume of flame to issue out at the front door, it would take the light wood work above much more rapidly than it would the floor of the shop; the consequence of which would be, that the upper parts would be burnt while the lower parts might remain untouched, and the lower beam may have been set on fire by sparks falling from the fire above.

One of the Jury. The surveyor likewise says upon his oath, that it was morally impossible it should be accidental.

Another of the Jury. It is in evidence, also, that the upper part of the house was on fire, and the

lower part on fire at the same time, but the intermediate space was not; so that the house could not have been set on fire by one general blaze.

Mr. Gaselee. The Company have been charged with oppression; their conduct has always been the very reverse, and it so continues; and, I have no objection on the part of the Company, to withdraw a juror upon the fifth issue.

Mr. Baron Graham. I am ready to make any observations which the case admits of; perhaps I don't recollect the circumstances enough; though, I think I can state the substance of the evidence pretty accurately without looking to my notes. It only occurs to me, that the question is brought by it to a nice measuring cast; and *you will consider that either way your verdict will conclude the question. The thing that makes me a little tender on this part of the case, is, that your verdict would send the man to trial with such a degree of prejudice against him, from having already been found guilty by so respectable a Jury, that it would be almost impossible for him to escape.* Whereas, by taking this sort of course, the matter is left open; and, if he is considered a fit object of public justice, he will be prosecuted, and prosecuted in the way in which such a business should come on. You are to decide on a civil question now; but, if we satisfactorily fix this crime upon the Plaintiff, the man goes to trial under a prejudice so strong, that it will be very difficult indeed for him to escape.

One of the Jury. *The evidence has made so strong an impression on our minds, that we cannot*

satisfy our consciences by giving a verdict for the Plaintiff upon the fifth issue.

MR. DAMPIER. We will consent to discharge you upon that issue.

ONE OF THE JURY. If we find a verdict upon the fifth issue, it must be for the Defendants.

MR. GASELEE. If your Lordship, and the Gentlemen of the Jury are satisfied to let the matter rest where it does, I do not on the part of the Company desire to press it further.

MR. BARON GRAHAM. It is very liberal on the part of the Company; and, considering how serious the consequence must necessarily be, if you were to send this man to trial for wilfully setting his house on fire, after the finding of your verdict upon the very point, I should think, Gentlemen, you will be satisfied to let the matter rest in the way consented to by the Defendant's Counsel.

THE FOREMAN OF THE JURY. The Jury feel the consequences your Lordship attaches to the finding upon this issue; but they decide upon their oaths, and can have nothing to do with the effect it may produce in another place; however, if the matter can rest here without calling upon the Jury to find any verdict upon this issue we are satisfied.

MR. BARON GRAHAM. Certainly; that is the safe and most satisfactory way.

JURY DISCHARGED UPON THE FIFTH ISSUE, AND A VERDICT FOR THE DEFENDANTS UPON ALL THE OTHER ISSUES.

THE END.

Printed by S. BURTON and B. WRIGHT,
31, Little Queen Street, London.

AP ALN XLt
The trial between William Lewo
Stanford Law Library
3 6105 044 158 777

Robert Crown Law Library
Stanford University
Stanford, CA 94305-8612